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2 E X H I B I T S

3 EXHIBITS IDENTIFIED ADMITTED

4 05-0159

5 CUB/CCSAO Exhibit 1.0 Corrected,
1.1, 1.2, 1.3 e-Docket 298

6 CUB/CCSAO Exhibit 2.0, 2.1,
2.2, 2.3 e-Docket 443

7 CUB/CCSAO Exhibit 3.0, 3.1 e-Docket 298

CUB/CCSAO Exhibit 4.0 e-Docket 443

8 DES-USESC 1.0, 1.1, 1.2 e-Docket 520

DES-USESC 2.0 Revised, 2.1 e-Docket 520

9
05-0160, 05-0161 & 05-0162

10 CUB Exhibit 1.0, 1.1, 1.2 e-Docket 300

11 CUB Exhibit 2.0, 2.1 e-Docket 452

CUB Exhibit 2.2 e-Docket 516

12 CUB Exhibit 3.0 e-Docket 300

CUB Exhibit 4.0 e-Docket 452

13 DES-USESC 1.0, 1.1 e-Docket 522

DESE-USESC 2.0 e-Docket 522

14
05-0159, 05-0160, 0161 & 0162

15 ComEd Cross Exhibit 9 348 373

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21

22

1 MR. ROSEN: Larry Rosen on behalf of the
2 Citizens Utility Board.

3 MR. LAKSHMANAN: On behalf of Dynegy Inc.,
4 Joseph L. Lakshmanan.

5 MR. REDDICK: For the IIEC, Eric Robertson,
6 Conrad Reddick, and Ryan Robertson.

7 MS. PUSEMP: On behalf of Building Owners &
8 Managers Association of Chicago, Christina Pusemp,
9 Patrick Giordano and Paul Neilan, Giordano & Neilan,
10 Ltd.

11 MR. GOLLOMP: On behalf of the United States
12 Department of Energy, Lawrence A. Gollomp
13 (G-o-l-l-o-m-p).

14 MR. BERNET: On behalf of Commonwealth Edison,
15 Darryl Bradford, Stacy O'Brien, and Rick Bernet.

16 MR. FOSCO: On behalf of staff of the Illinois
17 Commerce Commission, Carmen Fosco, Carla Scarsella,
18 John Reichart, and John Feeley.

19 JUDGE WALLACE: Anyone in Chicago?

20 MS. SATTER: Yes. Susan L. Satter appearing on
21 behalf of the People of the State of Illinois. Do
22 you need my address?

1 JUDGE WALLACE: No. That's fine. Thank you.

2 Anyone else?

3 All right. Thank you.

4 Let the record reflect there are no
5 other appearances at today's hearing.

6 JUDGE JONES: At this time, I also call for
7 hearing the three following consolidated so-called
8 Ameren dockets: 05-0160, 05-0161, and 05-0162.

9 The first of these is 0160, Central
10 Illinois Light Company d/b/a AmerenCILCO, proposal to
11 implement a competitive procurement process by
12 establishing Rider BGS, etc.

13 Central Illinois Public Service
14 Company is 05-0161, and Illinois Power Company is
15 05-0162. The rest of the case name is the same.

16 At this time, we will ask the parties
17 to enter your respective appearances orally for the
18 record.

19 You can skip the business addresses
20 and phone numbers unless they have changed since you
21 entered them previously, which is doubtful.

22 We'll start with the Ameren utilities.

1 MR. FLYNN: Christopher Flynn and Laura Earl
2 from Jones Day on behalf of the Ameren Utilities and
3 also appearing on behalf of the companies is Edward
4 Fitzhenry.

5 MR. STAHL: David Stahl on behalf of Midwest
6 Generation.

7 MR. TOWNSEND: On behalf of the Coalition of
8 Energy Suppliers, the law firm of DLA Piper Rudnick
9 Gray Cary US, LLP by Christopher J. Townsend and
10 William A. Borders.

11 MS. SPICUZZA: On behalf of the Cook County
12 State's Attorney's Office, Assistant State's Attorney
13 Marie D. Spicuzza.

14 MR. ROSEN: Larry Rosen on behalf of the
15 Citizens Utility Board.

16 MR. RIPPPIE: On behalf of Commonwealth Edison
17 Company, Glenn Rippie and Paul Hanzlik of Foley &
18 Lardner, LLP as well as Darryl Bradford.

19 MR. REDDICK: For the IIEC, Eric Robertson,
20 Conrad Reddick, and Ryan Robertson.

21 MR. LAKSHMANAN: For Dynegy Inc., Joseph L.
22 Lakshmanan.

1 MR. FOSCO: Appearing on behalf of staff of the
2 Illinois Commerce Commission, Carmen Fosco, Carla
3 Scarsella, John Feeley, and John Reichart.

4 JUDGE JONES: Thank you.

5 Are there any other appearances from
6 those who are physically present in Springfield?

7 Let the record show there are not.

8 Are there some appearances to be
9 entered by those in the Chicago hearing room?

10 MS. SATTER: Yes. Appearing on behalf of the
11 People of the State of Illinois, Susan L. Satter.

12 JUDGE JONES: Thank you.

13 Are there any other appearances?

14 Let the record show there are not.

15 One of the appearances that you just
16 heard entered in the Ameren utility matters was by
17 Ms. Spicuzza. I guess, why don't we characterize
18 that as an appearance for the purposes of today's
19 hearings given this special circumstances.

20 Would that be a correct
21 characterization?

22 MS. SPICUZZA: Yes, Judge.

1 JUDGE JONES: Whether anything needs to be
2 filed in writing at some point is something we can
3 deal with later if we need to with the input of the
4 parties.

5 Does anyone have any objection to
6 proceeding in that matter this morning?

7 All right. Then let the record show
8 no response to that so we'll proceed accordingly.

9 MS. SPICUZZA: Thank you.

10 JUDGE WALLACE: Did you have something?

11 MR. LAKSHMANAN: Judge Jones, in the Ameren
12 case, there is no cross for one of the witnesses, and
13 per your note from yesterday, I was going to have her
14 testimony put in by affidavit if that is acceptable.

15 JUDGE JONES: Do you need an answer on that
16 this minute?

17 MR. LAKSHMANAN: No.

18 JUDGE JONES: I'll need to sort of check with
19 the other parties and make sure that's the case but I
20 think we've got a lot to do today, so I'd rather not
21 drift off onto that at this minute unless you need an
22 answer right now, and if you do, we'll take it up.

1 JUDGE WALLACE: All right. And Mr. Fagan has
2 been patiently standing there waiting.

3 Are there any other witnesses in the
4 audience right now that haven't been sworn?

5 MR. ROSEN: William Steinhurst will be called
6 by CUB and Cook County State's Attorney's Office as
7 well.

8 JUDGE WALLACE: All right.

9 Anyone else?

10 MR. TOWNSEND: I have James Stephens on behalf
11 of Direct Energy and U.S. Energy Savings Corp.

12 JUDGE WALLACE: Okay. Would you raise your
13 hands, gentlemen?

14 (Whereupon the witnesses were
15 sworn by Judge Wallace.)

16 JUDGE WALLACE: Ms. Spicuzza?

17 MS. SPICUZZA: Thank you, Judge.

18 We would like to call Robert M. Fagan
19 on behalf of the Citizens Utility Board and the Cook
20 County State's Attorney's Office to the stand,
21 please.

22

1 ROBERT N. FAGAN
2 called as a witness herein, on behalf of Citizens
3 Utility Board and Cook County State's Attorney's
4 Office, having been duly sworn on his oath, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SPICUZZA:

8 Q. Would you please state your name?

9 A. Robert N. Fagan.

10 Q. And, Mr. Fagan, by whom are you employed?

11 A. I'm employed by Synapse Energy Economics.

12 Q. And what is the address of Synapse?

13 A. 22 Pearl Street, Cambridge, Massachusetts
14 02139.

15 Q. Mr. Fagan, you have before you a number of
16 exhibits.

17 The first one is CUB/CCSAO Exhibit 1.0
18 Corrected which is the corrected direct testimony of
19 Robert M. Fagan.

20 You have CUB/CCSAO Exhibit 1.1 with
21 the initials RNF-1 which is the curriculum vitae of
22 Robert Fagan.

1 You have CUB/CCSAO Exhibit 1.2 which
2 is northern Illinois installed capacity market
3 concentration.

4 Next, CUB/CCSAO Exhibit 1.3 which is
5 the PJM-MISO seam exhibit.

6 You have also have CUB/CCSAO
7 Exhibit 3.0 which is the rebuttal testimony of Robert
8 M. Fagan, and finally, CUB/CCSAO Exhibit 3.1 which is
9 titled "Alternative computations of HHI in northern
10 Illinois including illustrative import capacity
11 allocation."

12 Do you have all those exhibits?

13 A. Yes.

14 Q. Were these exhibits prepared by you or
15 under your direction?

16 A. Yes.

17 Q. And do you have any changes to your
18 testimony today?

19 A. Yes.

20 Q. And what is the first change?

21 A. On CUB/CCSAO Exhibit 1.0, on Page 12,
22 Footnote 9...

1 Q. May I stop you? It's CUB/CCSAO Exhibit 1.0
2 Corrected, is that right?

3 A. Yes, that's correct.

4 MS. SPICUZZA: Okay. And this was filed
5 yesterday, September 6, 2005 on e-docket so everyone
6 should have these changes. They're minor
7 typographical changes in the footnotes.

8 Go ahead. I'm sorry.

9 THE WITNESS: On Page 12, Footnote 9, the end
10 of the sentence says October 1, 2005. It should read
11 October 1, 2004.

12 Q. Thank you.

13 Are there any more?

14 A. Yes.

15 On Page 24, Footnote 20, the first
16 phrase of that footnote which says in the uncorrected
17 version "MISO and PJM joint filing to FERC" should be
18 stricken. The footnote should begin with "FERC order
19 in docket number..."

20 Q. Thank you.

21 And is there one more change?

22 A. Yes.

1 On Page 33, Footnote 29, I just added
2 a citation for where this paragraph comes from. The
3 addition reads in parentheses at the end of the
4 quotation (Attachment K Appendix, Section 6.1.4(e)).

5 Q. Thank you, Mr. Fagan.

6 And are these exhibits true and
7 correct to the best of your knowledge?

8 A. Yes.

9 Q. If I asked you these same questions, would
10 your answers be the same today?

11 A. Yes.

12 MS. SPICUZZA: Your Honor, at this time I would
13 move for admission of CUB/CCSAO Exhibit 1.0
14 Corrected, CUB/CCSAO Exhibit 1.1 with the initials
15 RMF-1, CUB-CCSAO Exhibit 1.2, CUB-CCSAO Exhibit 1.3,
16 CUB-CCSAO Exhibit 3.0, and CUB/CCSAO Exhibit 3.1.

17 JUDGE WALLACE: Any objection?

18 CUB/CCSAO Exhibits 1.0, 1.1, 1.2, 1.3,
19 3.0 and 3.1 are admitted.

20 MS. SPICUZZA: And just so the record is clear,
21 Your Honor, this is in Docket 05-0159.

22 JUDGE WALLACE: Thank you.

1 I'm sorry. I should note that
2 CUB/CCSAO Exhibit 1.0 is Exhibit 1.0 Corrected.

3 MS. SPICUZZA: Thank you, Judge.

4 (Whereupon CUB/CCSAO Exhibits
5 1.0 Corrected, 1.1, 1.2, 1.3,
6 3.0 and 3.1 in Docket 05-0159
7 were admitted into evidence at
8 this time.)

9 Q. BY MS. SPICUZZA: Mr. Fagan you also have a
10 number of exhibits in the Ameren Docket No. 05-0160
11 through 05-0162, is that correct?

12 A. Yes.

13 Q. And the first exhibit is the Citizens
14 Utility Board Exhibit 1.0, the direct testimony of
15 Robert M. Fagan.

16 You also have CUB Exhibit 1.1 which is
17 the Fagan curriculum vitae. You have the Citizens
18 Utility Board Exhibit 1.2, the PJM-MISO seam, CUB
19 Exhibit 3.0, the rebuttal testimony of Robert M.
20 Fagan.

21 Now, were these exhibits prepared by
22 you and under your direction.

1 A. Yes.

2 Q. And do you have any changes to your
3 testimony today?

4 A. No.

5 Q. Are these answers in these exhibits
6 contained before you true and correct to the best of
7 your knowledge?

8 A. Yes.

9 Q. And would your answers be the same if I
10 asked you these same questions today?

11 A. Yes.

12 MS. SPICUZZA: Your Honor, I would like to move
13 for the admission of CUB Exhibit 1.0, CUB
14 Exhibit 1.1, CUB Exhibit 1.2, CUB Exhibit 3.0 in
15 Dockets 05-0160 through 05-0162.

16 JUDGE JONES: Thank you.

17 Any objections to that?

18 Let the record show there are not.

19 The exhibits just offered are admitted
20 into evidence. CUB Exhibit 1.0 filed on e-docket on
21 June 15, 2005, CUB Exhibit 1.1 filed on the same
22 date, CUB Exhibit 1.2 filed on the same date, and CUB

1 Exhibit 3.0, rebuttal testimony filed August 10, 2005
2 are all admitted into the evidentiary record as they
3 appear on e-docket.

4 (Whereupon CUB Exhibits 1.0,
5 1.1, 1.2 and 3.0 in Dockets
6 05-0160, 05-0161 and 05-0162
7 were admitted into evidence at
8 this time.)

9 MS. SPICUZZA: And, Your Honor, could I have
10 his name and address reflected also in the Ameren
11 docket or would you like him to repeat it?

12 JUDGE JONES: He will not need to repeat it.

13 MS. SPICUZZA: Thank you.

14 JUDGE JONES: And just so the record is clear,
15 as stated in the motion, the exhibits just admitted
16 are in 05-0160 through 0162.

17 MS. SPICUZZA: Thank you, Judge.

18 We would tender the witness for
19 cross-examination.

20 JUDGE WALLACE: Who would like to go first?

21 MR. STAHL: I have cross.

22 JUDGE WALLACE: All right. Mr. Stahl?

1 MR. STAHL: Thank you.

2 JUDGE JONES: Ms. Satter, can you hear the
3 witness okay?

4 MS. SATTER: Yes, fine. Thanks.

5 MR. STAHL: Good morning Mr. Fagan. My name is
6 David Stahl, and I represent Midwest Generation in
7 this case.

8 CROSS-EXAMINATION

9 BY MR. STAHL:

10 Q. Mr. Fagan, I'm going to be questioning you
11 and referring to the testimony that you filed in the
12 0159 ComEd docket, so if you'd like to have that
13 testimony handy, it might make this go a little more
14 expeditiously this morning.

15 Just briefly --

16 JUDGE JONES: Mr. Stahl, just for
17 clarification, is this entire line of questioning
18 intended to be specific to that docket?

19 MR. STAHL: Well, it will be the same questions
20 and answers in the Ameren docket as well. We can
21 make this specific to the ComEd docket.

22 JUDGE JONES: We just want to make sure the

1 record is clear that if a line of questioning is
2 intended to be specific to one docket that we need to
3 know that before beginning and upon concluding that
4 line of questioning.

5 Otherwise, it will be assumed to be
6 intended for both dockets.

7 MR. STAHL: I think the intent for my part
8 would be that this will be for both dockets.

9 JUDGE JONES: Thank you.

10 Q. BY MR. STAHL: Mr. Fagan, you have a
11 Bachelor's degree from Clarkson University in
12 mechanical engineering with a specialty in thermal
13 sciences, is that correct?

14 A. That's correct.

15 Q. That has nothing to do with auction theory
16 or design or behavior of bidders in energy auctions,
17 does it?

18 A. That's correct.

19 Q. You didn't take any courses in those
20 subjects while you were at Clarkson University, did
21 you?

22 A. I took microeconomics courses at Clarkson

1 University. I don't recall if those courses
2 explicitly addressed auction theory.

3 Q. And then you have a Master's degree in
4 energy and environmental studies from Boston
5 University with apparently specializations or
6 concentrations in resource economics, ecological
7 economics, and econometric modeling, is that correct?

8 A. That's correct.

9 Q. And none of those areas involve expertise
10 in auction theory or design or the bidding behavior
11 of participants in auctions, is that correct?

12 A. That's correct.

13 Q. Have you ever been professionally engaged
14 to represent a bidder in an auction of any kind?

15 A. Yes. While I was employed at Tabors,
16 Caramanis & Associates, we were often employed by
17 clients to analyze electric industry issues
18 including, for example, FTR auctions.

19 Q. And are those engagements listed on Page 2
20 of your Exhibit RMF-1? And I'm looking specifically
21 about the middle of the page where you say you
22 attended RTO-ISO meetings and then the last sentence

1 there is you consulted on a New England FTR auction
2 and ARR allocation schemes.

3 Is that what you were referring to?

4 A. That's one example of the work we did for
5 clients in regards to the New England FTR auctions,
6 yes.

7 Q. All right. And you also list on your
8 resume additional professional training that you've
9 had, and that's at Page 3 of Exhibit RMF-1, is that
10 correct?

11 A. That's correct.

12 Q. And you completed -- I just want to make
13 sure that this is a complete list of all of the
14 additional professional training you've had -- course
15 work in solar engineering, building system controls
16 and co-generation, correct?

17 A. That's correct.

18 Q. As well as illumination engineering society
19 courses in lighting design; is that also correct?

20 A. That's correct.

21 Q. And again, there was no reference here to
22 any additional professional training in auction

1 theory, design, or the behavior of bidders in
2 auctions of any kind, is that correct?

3 A. That's correct.

4 Q. I notice that you are also engaged on
5 behalf of Enron in Canada to work on congestion
6 issues, is that correct?

7 A. Yes. The engagement by Enron-Canada was on
8 a whole host of electric market restructuring issues
9 in Ontario and in Alberta.

10 Q. You didn't work for Enron in California on
11 any of their projects there, did you?

12 A. No, I didn't. It's possible that Caramanis
13 & Associates was employed by Enron related to
14 California work.

15 Q. One of the schemes that Enron engaged in in
16 California had to do with congestion pricing, did it
17 not?

18 A. That's my understanding.

19 Q. Now, let me go to your testimony for a
20 second; actually more than a second.

21 As I read your testimony, Mr. Fagan,
22 your theme seems to be -- and I'm looking at Page 14

1 of your rebuttal testimony, Lines 313 to 315.

2 Your theme to be as stated there, high
3 supplier concentration in the northern Illinois
4 region results in the potential for exercise of
5 market power during times when transmission is
6 constrained into ComEd.

7 That statement or similar statements
8 appear in numerous places throughout your testimony.
9 Is that fair to say?

10 A. Yes.

11 Q. And is it fair to characterize that as sort
12 of the central thesis of your testimony?

13 A. There's multiple central theses. That's
14 one of them. I think the other two central theses
15 have to do with the immaturity of the MISO markets
16 and the existence of the PJM-MISO seam.

17 Q. All right. I'm going to leave those other
18 two themes to someone who knows more about that than
19 I do, so let me focus on this theme if we can, okay?

20 And when you say the potential for
21 exercise of market power during times when
22 transmission is constrained, specifically, the market

1 to which you are referring is, as you say on Page 31
2 of your rebuttal testimony, potential for exercise of
3 market power in the physical spot markets, is that
4 correct?

5 A. Yes.

6 Q. Not in the auction itself, correct?

7 A. Yes.

8 Q. And I suppose to be even more specific,
9 your concern would be the potential for exercise of
10 market power in the physical spot markets in the
11 years 2007 to 2011, is that correct?

12 A. That's correct.

13 Q. And the market power derives from what you
14 consider to be high levels of concentration in
15 northern Illinois, correct?

16 A. Yes.

17 Q. And your initial testimony, Exhibit 1, sets
18 forth in an exhibit your calculation of those high
19 levels or what you characterize as high levels of
20 concentration, correct? And that's specifically on
21 Exhibit 1.2 to your testimony.

22 A. Yes.

1 Q. And you've taken all of the suppliers and
2 their share of capacity, and as shown on the left
3 hand table on that exhibit, you calculated an HHI of
4 2015, correct?

5 A. Yes.

6 Q. And you compared that to the FTC merger
7 guidelines and have concluded that that falls in the
8 category of a "highly concentrated" market, correct?

9 A. Yes.

10 Q. Now, the little box on the right shows the
11 effect on supplier capacity shares if imports to the
12 extent of 4700 megawatts are included, correct?

13 A. Yes.

14 Q. And one thing you do not show, however, are
15 the resulting HHI number considering those imports,
16 correct?

17 A. That's correct. At that table I don't show
18 that.

19 Q. It certainly is easily calculable however,
20 is it not?

21 A. Not necessarily.

22 Q. Not necessarily. Well, let's just work

1 with the information you've shown here.

2 You show, for example, that with
3 4700 megawatts of imports, Exelon Generation's
4 capacity share decreases from 37-1/2 percent to
5 32-1/2 percent, correct?

6 A. Yes.

7 Q. And it's simple enough to show what HHI
8 number would result from a 32-1/2 percent share of
9 the market, is it not?

10 A. No, it's not. You've got to do the
11 allocation for the imports before you can calculate
12 an HHI.

13 Q. Well, here you haven't allocated imports at
14 all to any of the existing suppliers in northern
15 Illinois, have you?

16 A. I haven't allocated the imports to any
17 suppliers at all in this table.

18 Q. Right. It could be suppliers entirely
19 outside of northern Illinois, couldn't it?

20 A. It could be.

21 Q. Let's assume for a moment that it is
22 entirely suppliers from outside of northern Illinois.

1 If that were to be the case then
2 Exelon Gen's share would be 32.5 percent, would it
3 not?

4 A. That would be the case, yes.

5 Q. And Midwest Gen's share would be 18.6
6 percent as opposed to 21.4 percent as shown in your
7 initial calculation on the left-hand side of the
8 page?

9 A. Yes, that's correct.

10 Q. And the other northern Illinois suppliers
11 now total 35.6 percent whereas in the initial
12 calculation they accounted for 41.1 percent, isn't
13 that correct?

14 A. Subject to check, that sounds right. I
15 don't have the summation of the percentages for the
16 other suppliers in front of me.

17 Q. Well, it would be a hundred percent less
18 the Midwest Gen share of 21.4 and less the Exelon Gen
19 share of 37.5, would it not?

20 A. Yes, it would.

21 Q. Or you could do it by calculating each of
22 the individual shares beginning with Ameren's 1.8

1 percent and continuing down the box through Tenaska's
2 1.3 percent, correct?

3 A. Yes.

4 Q. All right. In any event, you do agree it
5 would be higher than 35.6 percent as shown on the
6 second box when you consider imports?

7 A. If imports were allocated... I'm sorry.
8 Could you repeat that question?

9 Q. Yeah.

10 We're still proceeding on the
11 assumption that imports are being allocated to
12 suppliers other than those presently serving northern
13 Illinois.

14 A. Okay. Under that assumption, other
15 northern Illinois suppliers would stay at 35.6
16 percent, and the imports would stay at the 13.3
17 percent listed in the table.

18 Q. And the imports of 13.3 percent, for
19 purposes of calculating an HHI, it makes a big
20 difference, does it not, whether that is one importer
21 accounting for 13 percent or, for example, 13
22 importers each accounting for one percent?

1 A. Yes, it does matter.

2 Q. And the worst case for purposes of
3 calculating an HHI would be to assume that one
4 importer accounts for 13.3 percent. Would you agree
5 with that?

6 By that what I mean is all else equal,
7 that will lead to a higher HHI than any other
8 assumption?

9 A. It will lead to a higher HHI if you've
10 assumed that all of the imports are allocated to a
11 supplier outside of northern Illinois.

12 That's not true if any of those
13 imports are allocated to suppliers inside of northern
14 Illinois.

15 Q. Sure. The numbers would change.

16 A. That's correct.

17 Q. Would you agree with me, Mr. Fagan, that
18 just working with the numbers shown in the box on the
19 upper right hand quadrant of your Exhibit 1.2 that if
20 you were to calculate an HHI using a capacity share
21 for Exelon Gen of 32.5 percent, Midwest Gen of 18.6
22 percent, other northern Illinois suppliers as shown

1 in imports assuming one importer of 13.3 percent,
2 that the resulting HHI would be less than 1,800?

3 A. I can't say whether or not it would be less
4 than 1,800. I do understand that Dr. Hieronymus's
5 testimony addresses that, and he does compute numbers
6 that are less than 1,800 although I will point out
7 that in my Exhibit 3.1 which was an attachment to my
8 rebuttal testimony, I did calculate HHIs under
9 assumptions where the imports were allocated to
10 suppliers within northern Illinois.

11 Q. In fact, you allocated all of the imports
12 to suppliers in northern Illinois in your
13 Exhibit 3.1, did you not, all 4,700 megawatts?

14 A. Yes. In that illustrative allocation, I
15 was demonstrating that if the imports were allocated
16 to existing northern Illinois suppliers, it could
17 maintain or increase the HHI concentration ratio.

18 Q. Right. And we're going to talk about your
19 Exhibit 3 in a little bit, but will you accept
20 subject to check for purposes of calculating HHIs on
21 this table in the upper right hand page of your
22 Exhibit 1.2 that the Exelon Gen share which is

1 accounted for by 32-1/2 percent would work out to an
2 HHI of 1,056? Does that sound about right to you?

3 A. I would not agree with something 1,056. If
4 you would have said something in the neighborhood of
5 1,500 or 1,600, I would agree subject to check based
6 on the computations that Dr. Hieronymus had
7 submitted.

8 Q. I'm not asking about Dr. Hieronymus's
9 calculations. I'm asking about what's on the face of
10 your Exhibit 1.2.

11 Let me ask you this.

12 Would you agree with me to this
13 extent; that to calculate Exelon Gen's HHI number
14 here assuming a capacity share of 32-1/2 percent, you
15 would just square 32.5 percent?

16 A. No. To compute an HHI, you have to look at
17 each of all of the suppliers and square their market
18 shares. You need to break it down in the same way
19 that I've broken it down on the left-hand side and in
20 the same way that I've broken it down on the tables
21 in Exhibit 3.1.

22 You cannot compute an HHI based solely

1 on the market share of a single or a couple of
2 suppliers.

3 Q. No. I'm trying to do this based on the
4 share of all of the suppliers, and I'm using 32-1/2
5 percent for Exelon Gen, 18.6 percent for Midwest Gen.
6 I'm using the same HHI for the other northern
7 Illinois suppliers which was 151 as shown in your
8 first calculation and then using the worst possible
9 case, imports of 13.3 percent from one importer.

10 In doing that, wouldn't you calculate
11 the HHI by squaring each of the capacity shares shown
12 in the box on the far right-hand column of your
13 second box on Exhibit 1.2?

14 A. Not exactly. You would square the 32.5
15 percent of Exelon. You would square the 18.6 percent
16 of Midwest Gen. You would square the 13.3 percent of
17 your assumed single importer, and then you would
18 square the individual fractions of the suppliers
19 making up the 35.6 percent.

20 Now, without having all of those in
21 front of me, preferably a calculator or a
22 spreadsheet, I would not agree to anything that said

1 an HHI was on the order of 1,050.

2 Q. All right. I didn't say 1,050 for a total.
3 What I said was for Exelon Gen, it would be 1,056.

4 A. It's quite possible that's the partial
5 component of HHI.

6 Q. Okay. And the other northern Illinois
7 suppliers, you would agree, would you not, that their
8 contribution to the 2,015 HHI is 151 which is the sum
9 of all of the capacity share squared beginning with
10 Ameren and concluding with Tenaska?

11 A. If you've just summed all of those shares
12 on the table on the left-hand side, those shares
13 depend upon Exelon and Midwest Gen having 37.5 and
14 21.4.

15 So in the scenario where Exelon has
16 32.5 and Midwest Gen has 18.6, those numbers are
17 likely to change.

18 Q. Right. They're likely to decline, are they
19 not, consideration of imports?

20 A. Yes, subject to check.

21 Q. All right. And if the imports were
22 accounted for by one importer with 13.3 percent, you

1 would square that to get their contribution to the
2 HHI, correct?

3 A. Yes, that's correct.

4 Q. And 13.3 percent squared is about 177, is
5 it not?

6 A. Subject to check. I don't have a
7 calculator. Well, I actually do have a calculator in
8 front of me, but I'm not going to do that right now,
9 but sure, subject to check.

10 Q. Okay. And if 13 importers each had one
11 percent share, the total HHI contribution of all of
12 the importers would be 13, would it not, one squared
13 13 times?

14 A. Subject to check, I'll agree with that.

15 Q. All right. Now, the market power that you
16 claim exists would be exercised through some form or
17 combination of both physical and/or economic
18 withholding, is that correct?

19 A. That's correct.

20 Q. And you also say in your rebuttal testimony
21 on Page 23 that the -- I'm looking on Lines 535 to
22 538 -- that the physical or economic withholding

1 would occur in far fewer than the total hours in a
2 year.

3 Is that also correct?

4 A. Yes. Market power could be exercised in a
5 form over the course of far fewer than the total
6 hours in a year, yes.

7 Q. And more specifically, you say on the next
8 page, Lines 541 and 542, that those far fewer hours
9 would essentially consist of peak periods when
10 transmission is constrained, is that correct?

11 A. The line actually says such as during peak
12 periods when transmission is constrained. I'm not
13 ruling out the possibility that they may be off-peak
14 periods or non-peak periods when transmission is
15 constrained.

16 JUDGE WALLACE: Mr. Stahl, are you getting
17 close?

18 MR. STAHL: Yes, I am, and tell you what, I
19 also reserved some time for Dr. Steinhurst. I don't
20 believe I'm going to have any cross for him.

21 If I go over a couple minutes, would
22 that be okay? I'm nearly finished however.

1 JUDGE WALLACE: Okay.

2 MR. STAHL: Thank you.

3 Q. What other off-peak times do you think
4 transmission might be constrained?

5 A. Off-peak times when the transmission system
6 was -- basically off-peak times when generation units
7 may be off line. You can get situations during
8 off-peak times where you have some counterintuitive
9 transmission constraints cropping up.

10 Q. Your testimony does not present any
11 evidence at all as to the existence of transmission
12 constraints at any time in northern Illinois, does
13 it?

14 A. That's correct. I have not done an
15 analysis evaluating the extent to which transmission
16 constraints in northern Illinois may be binding
17 during the 2007-2011 interval.

18 Q. And that is true in both off-peak periods
19 and on-peak periods, is it not?

20 A. Yes, that is true.

21 I would expect -- this says such as
22 during peak periods when transmission is constrained.

1 I would expect it to be primarily
2 during peak periods. I'm just not ruling out the
3 possibility; less likely that it may occur during off
4 peak periods.

5 Q. You're not ruling out the possibility, but
6 you do state quite clearly in your testimony on Page
7 10 of your rebuttal testimony that the extent to
8 which such transmission constraints may bind during
9 summer peak periods or even in other periods in 2007
10 through 2011 is unclear?

11 A. That's correct.

12 Q. You just do not know, do you?

13 A. That's correct.

14 Q. And when you say may bind during summer
15 peak periods, you really mean by that to which such
16 transmission complaints may bind if at all during any
17 period of time, correct, because you don't know?

18 A. That's correct.

19 Q. Now, you also say -- I'm going back to your
20 initial testimony on Page 14 -- you say that, in
21 referring to Exelon's obligation to provide load to
22 ComEd, you say at Lines 277 to 280, as long as this

1 obligation is in place, the high ownership
2 concentration levels in the northern Illinois region
3 are less likely to lead to market power abuse in the
4 PJM spot markets since Exelon's northern Illinois
5 capacity is committed to serving this load.

6 That's your testimony, is it not?

7 A. Yes.

8 Q. It's also true, is it not, that in the
9 years 2007 to 2011, other contracts will be in place
10 obligating suppliers to deliver requirements or
11 ComEd's full requirements at fixed prices, is that
12 correct?

13 A. Yes, that is correct. That's a very
14 important point though.

15 Q. Okay. Well, we'll come back to that very
16 important point, and I agree with you. That is a
17 very important point.

18 In those years 2007-2011, to the
19 extent that Exelon Generation and Midwest Generation
20 have won contracts, it is true that concentration
21 levels are also less likely to lead to market power
22 abuses in the PJM spot market as you say on Page 14

1 with respect to the present situation. You'd expect
2 that to be the case, would you not?

3 A. Yes, at that point after the auction has
4 concluded and after the auction prices have been
5 revealed.

6 Q. All right. Now, those contracts, have you
7 seen the form supplier contracts that exist, that
8 ComEd has filed in this proceeding?

9 A. I did look at it briefly.

10 Q. All right. You're aware, are you not, that
11 those contracts have default and termination payment
12 provisions in the event that the supplier fails to
13 deliver power?

14 A. I would expect that that would be part of
15 the contract, yes.

16 MR. STAHL: All right. Thank you.

17 I have nothing further at this time.

18 JUDGE WALLACE: Further cross of Mr. Fagan?

19 Mr. Flynn?

20 MR. FLYNN: Good morning Mr. Fagan.

21 THE WITNESS: Good morning.

22 MR. FLYNN: I'm Christopher Flynn. I'm going

1 to be asking you some questions on behalf of the
2 Ameren Companies, and I suppose my intent is to ask
3 these questions in the Ameren dockets unless someone
4 has a reason why I should be asking them in both.

5 JUDGE JONES: So unless otherwise indicated,
6 your entire line of questioning is intended to be
7 specific to the Ameren dockets?

8 MR. FLYNN: That's correct.

9 Mr. Fagan, I have, and I really mean
10 it when I say it, just a few questions for you this
11 morning, and for the judges' benefit, based on
12 conversations I had with Mr. Stahl and Mr. Rippie, I
13 was able to eliminate a lot of the questions I had so
14 I should come in substantially under my very good
15 faith estimate that I provided previously.

16 CROSS-EXAMINATION

17 BY MR. FLYNN:

18 Q. Sir, I'd like to direct you to Page 10 of
19 your direct testimony in the Ameren proceeding.

20 Just give my a holler when you get
21 there.

22 A. All set.

1 Q. All right. Here you're talking about the
2 absence of structured capacity markets in the MISO
3 region.

4 Do you see that?

5 A. Yes.

6 Q. All right. And in Footnote 7, you indicate
7 that you had a personal communication with Michael
8 Robinson of the Midwest ISO on the day before you
9 filed this testimony, is that right?

10 A. That's correct.

11 Q. Who is Michael Robinson?

12 A. He's an employee of the Midwest ISO whose
13 name was on a presentation that the Midwest ISO had
14 given on supply adequacy, and I had seen the minutes
15 of the presentations from the supply adequacy working
16 group meeting, and I wanted to make sure that I
17 understood what MISO's current plans were for
18 resource adequacy construct, so I just called him up
19 and I asked him what's MISO's current understanding
20 of when a resource adequacy construct will be in
21 place, and he told me June 2007.

22 Q. All right. So it was your understanding

1 based on that phone call that the date for MISO's
2 implementation of some sort of capacity market would
3 be June 2007, is that right?

4 A. That's correct.

5 Q. Have you talked to Mr. Robinson since the
6 day before you filed your direct testimony?

7 A. No, I have not.

8 Q. All right. It is true, isn't it, that MISO
9 intends to have a capacity exchange up and running
10 before the September 2006 auction that Ameren has
11 proposed?

12 A. I'm not aware of that.

13 Q. All right. You haven't called anyone else
14 at MISO?

15 A. No, I have not.

16 Q. All right. Have you reviewed any other
17 MISO presentations in the last few weeks?

18 A. In the last month or so, the only thing
19 that I think I remember seeing is a communication on
20 the MISO server lists concerning a plan or an option
21 to not implement capacity markets at all.

22 Q. All right. So this would come as a

1 surprise to you if it, in fact, is true?

2 A. It wouldn't necessarily come as a surprise
3 to me that MISO has structured some sort of a
4 capacity exchange. You know, shooting off the cuff
5 here, that sounds like something that MISO would
6 facilitate, bilateral capacity arrangements without
7 actually being involved in setting up a formal
8 resource adequacy or capacity market similar to
9 what's in place in the other ISOs in the northeast.

10 Q. All right. But the extent of your
11 knowledge at this point is reflected on Page 10 of
12 your direct testimony and is based on your
13 conversation with Michael Robinson on June 14th of
14 this year, is that right?

15 A. That's correct.

16 Q. Quickly, I just want to ask you about one
17 other aspect of your direct testimony, actually, all
18 of your testimony, and that has to do with the
19 PJM-MISO seam, and if you could just for reference
20 turn to Page 16 of your direct testimony in the
21 Ameren dockets.

22 A. Okay.

1 Q. All right. And there, don't you on Lines
2 295 to 298 indicate that the presence of the seam
3 prevents certain good things from occurring? Is that
4 fair?

5 A. Yes.

6 Q. And you indicate beginning on Line 298 that
7 these good things, when present, produce reduced
8 prices for consumers who are affected by market
9 pricing outcomes, is that right?

10 A. Yes.

11 Q. All right. So it's your implication then
12 that the absence of these features would mean that
13 consumers would see higher prices, is that right?

14 A. Yes.

15 Q. All right. And you believe that prices
16 would be higher upon both sides of the seam, is that
17 correct?

18 A. Not necessarily. I answered a discovery
19 question in this regard that asked that exact
20 question, would prices be higher on both sides of the
21 seam, and the response to that discovery question was
22 that it depends upon the time interval that you're

1 looking at.

2 Q. All right. So they could be higher on both
3 sides of the seam?

4 A. They could be higher on both sides of the
5 seam over time. For any given hour, it's likely that
6 they would be higher on one side and lower on the
7 other side.

8 Q. Right. So they could be higher on one side
9 and lower on the other side for any given time
10 interval, is that right?

11 A. For a single hourly interval, that's the
12 case. For any other time interval, you could start
13 having an averaging effect.

14 So in one hour, it could do this --
15 and this is an extreme example -- in one hour the
16 prices could differ such as one side was high and the
17 other is low, and then in another hour, the prices
18 could differ such that it's higher on the other side.

19 For example, there may be periods
20 where it makes economic sense for imports to flow in
21 a particular direction from MISO to PJM. Then there
22 are going to be other times where it makes sense,

1 economic sense for inputs to flow in the other
2 direction.

3 So depending upon how you define the
4 time intervals, you could end up with no difference,
5 one side higher, one side lower, or both higher.

6 Q. It would also depend on the magnitude of
7 the price differences, would it not?

8 A. Yes.

9 Q. Because the fact that power doesn't flow
10 from one side to the other could be more than offset
11 by an equal lack of flow in the other direction
12 depending on the relative price differences, right?

13 That may have been a little obtuse.
14 Forget that.

15 It's true, isn't it, that
16 theoretically a seam could keep prices lower on one
17 side than they otherwise would be?

18 A. Yes, that's true.

19 Q. In particular, if the seam denied say MISO
20 generation access to higher priced markets on the
21 other side of the seam, that would tend to keep the
22 lower cost MISO generation home, is that right?

1 A. That's correct, under those assumptions,
2 yes.

3 Q. All right. For example, if the seam
4 prevented MISO generators from selling into
5 relatively high priced northeastern United States,
6 that would tend to suggest that there would be
7 greater availability of the MISO generation on the
8 MISO side of the seam, is that right?

9 A. Yes, that tends to suggest that.

10 Q. In any event, you acknowledge that you
11 haven't modeled the impact of the seam on the
12 Illinois regions on both sides of the seam, is that
13 right?

14 A. That's correct.

15 MR. FLYNN: That's all I have.

16 JUDGE WALLACE: Thank you.

17 Mr. Rippie?

18 MR. RIPPIE: The Attorney General's Office I
19 think also has five minutes reserved. I'm happy to
20 proceed if they, in fact, don't have any
21 cross-examination of the witness. If they do, I'd
22 ask that they go first.

1 MS. SATTER: We don't have any
2 cross-examination for this witness.

3 MR. RIPPIE: Good morning, Mr. Fagan.

4 THE WITNESS: Good morning.

5 JUDGE WALLACE: Does staff have any cross of
6 Mr. Fagan?

7 MR. FOSCO: No.

8 MR. RIPPIE: I'm sorry. There was an e-mail
9 last night on that.

10 JUDGE WALLACE: Oh, okay.

11 CROSS-EXAMINATION

12 BY MR. RIPPIE:

13 Q. Mr. Fagan, I'm going to do my best to avoid
14 any duplication because we want to get through this
15 as fast as possible.

16 If at any time you don't understand
17 any of my questions, would you please tell me that
18 right at the outset and I'll try to rephrase it.
19 Save time that way, okay?

20 A. All right.

21 Q. Mr. Stahl asked you a number of questions
22 concerning your experience, and I'm just going to add

1 a couple to those.

2 Is it correct, Mr. Fagan, that you've
3 never worked as a transmission system planner for any
4 utility or RTO?

5 A. That's correct.

6 Q. And you've never worked as a transmission
7 system planner for any regional reliability
8 organization, right?

9 A. That's correct.

10 Q. You've also never served as a transmission
11 system operator for any utility, regional reliability
12 organization, ISO, or any other transmission
13 provider, right?

14 A. That's correct.

15 Q. And is it also true that you've never
16 worked as a load dispatcher or security coordinator
17 for any such entity?

18 A. That's correct.

19 Q. And you've never personally worked for a
20 generating company, right?

21 A. I have worked for a utility company which
22 was a vertically integrated utility company at the

1 time which included generation, transmission, and
2 distribution.

3 Q. You were not responsible during that period
4 of time for the construction of any new generating
5 facilities though, were you?

6 A. No, I was not.

7 Q. And Mr. Stahl asked you some questions
8 about your experience with auctions, and I think the
9 only other one I wanted to ask you is, you have never
10 previously published any article, study, or report on
11 competitive electric procurement design, have you?

12 A. Yes, that's correct.

13 Q. Now, are you generally familiar with the
14 operating characteristics of different kinds of
15 generation?

16 A. Yes.

17 Q. Would you agree with me that in general,
18 nuclear generation has a high capacity cost?

19 A. Yes.

20 Q. And would you agree with me that it is
21 impossible to rapidly maneuver a nuclear generating
22 unit over wide swings in power output?

1 A. Yeah. You use the word impossible. I'd
2 say generally that's the case. You don't maneuver
3 nuclear generation quicker.

4 Q. Well, if you shut down a nuclear unit, do
5 you know how long the NRC requires you to take in
6 order to bring it back up?

7 A. I do not know.

8 Q. Would you agree we're talking days, not
9 hours?

10 A. That sounds reasonable.

11 Q. I'm going to ask you some big picture
12 questions in the hope that that will allow me to get
13 pages that are later on in the stack, so let's forge
14 forward.

15 Is it true, Mr. Fagan, that you are
16 not making any claim that there is currently any
17 exercise of market power in northern Illinois?

18 A. That's correct.

19 Q. Is it also true that you have no evidence
20 of any specific instance at which market power was
21 exercised in northern Illinois after January 1st of
22 2000?

1 A. That's correct.

2 Q. Is it also true that you are aware of no
3 evidence of any specific instance of strategic
4 bidding after January 1, 2000?

5 A. That's correct.

6 Q. Is it also true that you have no evidence
7 of any specific instance of strategic bidding or
8 collusion or exercise of market power in any of the
9 New Jersey full requirements auctions?

10 A. Could you repeat that question, please?

11 Q. Sure. I think I can.

12 A. I mean, the first part of your question was
13 similar to what I responded to in discovery requests,
14 and I wanted to make sure that I heard that part
15 right because I'm not sure that I had discovery
16 questions pertaining to New Jersey specifically.

17 Q. You understand that not all my questions
18 today are going to match my data requests, right?

19 A. I absolutely understand that, yes.

20 Q. In fact, this one kind of relates to 4.05B
21 if you want to get it in front of you.

22 A. Thank you.

1 Q. I was asking you to confirm that you have
2 no evidence of any specific instance of strategic
3 bidding, collusion, or exercise of market power in
4 any of the New Jersey full requirements auctions.

5 A. Yes, that's correct.

6 Q. And is it also true that you have no
7 evidence of any specific instance of strategic
8 bidding, collusion, or exercise of market power by
9 any affiliate of Exelon any time anywhere?

10 A. Yes, that's correct.

11 Q. Now, throughout your testimony, you make no
12 claim, do you, that there will be any exercise of
13 market power in 2007 through 2011 in northern
14 Illinois?

15 A. That's correct. I claim that the potential
16 to exercise market power exists or can exist.

17 Q. And my statement is true regardless of who
18 the bidder is, right?

19 A. Your statement about history?

20 Q. No. I'll phrase the question completely
21 again. I'm trying to speed things up but I don't
22 want to have any confusion.

1 You make no claim with respect -- try
2 that even more simply.

3 You do not claim that any bidder at
4 all, whether it is a generator or a financial player,
5 will exercise market power during the period when
6 these auctions are in effect?

7 A. That's correct. I'm making no specific
8 claims regarding bidders. I'm just making the claim
9 that the potential exists in the spot markets.

10 Q. And is, in fact, the reason that you are
11 making that claim that based on the analysis you did,
12 you cannot claim that market power would be exercised
13 during that period?

14 A. I did not do an analysis nor did ComEd or
15 anyone else looking carefully at whether or not
16 market power can be exercised during the 2007 to 2011
17 time frame.

18 Because I did not do such an analysis,
19 I can't make a claim that there will be exercise of
20 market power. I can only state that there will be
21 the possibility.

22 Q. The answer to my question is yes, that you

1 can't make that claim?

2 A. That's correct.

3 Q. And it is true also though that the ability
4 to exercise market power also doesn't mean that it
5 ever will be exercised, right?

6 A. That's correct.

7 Q. It also doesn't mean that it can be
8 exercised profitably, right?

9 A. That's correct.

10 Q. And is it also true that you performed no
11 studies or analyses of even the potential for market
12 power aside from the HHI screening test?

13 A. That's correct.

14 Q. Mr. Stahl asked you many of the questions I
15 was planning on asking you about transmission
16 constraints. I think I really only have one or two
17 left.

18 Is it true that in addition -- let me
19 ask it this way.

20 Oh, never mind. We'll let David's
21 cross stand.

22 You have conducted no historical price

1 analyses or any modeling exercises to assess how the
2 prices in northern Illinois compare to the RESs, PJM
3 or MISO?

4 I'll back up.

5 You have not conducted any price
6 analyses or modeling exercises to assess how the
7 prices in northern Illinois are likely to compare to
8 the RESs and PJM or MISO after 2006, is that correct?

9 A. That's correct.

10 Q. Now, if there were transmission constraints
11 into the ComEd load zone, you would expect the prices
12 in the ComEd load zone to be higher than the rest of
13 the PJMs, is that right?

14 A. That's correct.

15 Q. And if, in fact, prices were lower in the
16 ComEd load zone, that would be compelling evidence of
17 the absence of systematic or significant constraints
18 into ComEd, would it not?

19 A. That's correct.

20 Q. Now, let's go back to the 40,000 foot load,
21 and I think we've saved ourselves a lot of time.

22 Would you agree that there is nothing

1 inherently unjust or unreasonable about selling
2 wholesale energy under market-based rates?

3 A. If the market in which those sales were
4 being made is a workably competitive market, yes.

5 Q. And by workably competitive, you don't mean
6 an economist's ideal. You mean functionally
7 competitive, right?

8 A. Yes.

9 Q. And you claim that there isn't anything
10 inherently unjust and unreasonable about ComEd buying
11 energy at wholesale?

12 A. I don't believe I make any specific claims
13 that I think there's anything inherently unjust about
14 ComEd buying energy at wholesale.

15 My concern is that the wholesale
16 market in which they would be purchasing is not
17 necessarily workably competitive or may not be
18 workably competitive in the time period that the
19 auctions will cover.

20 Q. I understand. I just want to make sure
21 that I understand your concern.

22 Do you make any claim that there is

1 anything inherently unjust and unreasonable about
2 Commonwealth Edison recovering the cost of the power
3 that it procures in the wholesale market?

4 A. Mr. Steinhurst's testimony goes to this
5 issue.

6 Q. If you tell me no, I'm done with it.

7 A. No, I don't make claims concerning the
8 justness or reasonableness of ComEd recovering
9 wholesale procurement costs.

10 Q. Now, is it true that so long as ComEd owns
11 no generation itself, it must purchase its electric
12 supply requirements for its full requirements load?

13 A. It must purchase or build, that's correct,
14 or meet that load through, partially through energy
15 efficiency for example.

16 Q. Well, if it meets it through efficiency,
17 then it's no longer its load, right? I mean, the
18 load has gone down.

19 A. That's true, but in planning circles if you
20 project out to 2009 and there's an extra 50 megawatts
21 of load projected for 2009 and you say, well, we're
22 going to do energy efficiency and that's how we're

1 going to buy down that 50 megawatts, you can
2 conceptually look at that as a purchase by ComEd by
3 way of energy efficiency.

4 Q. Fair enough, but I'm not talking about the
5 margin.

6 If ComEd doesn't own it -- and I
7 presume when you say build it, you're talking about
8 ComEd ending up with the plant. If ComEd doesn't own
9 it, ComEd has to buy it, right?

10 A. If ComEd doesn't own it, yes, they either
11 have to buy it or they have to build it or go to the
12 market, yes.

13 Q. And because ComEd resells that electricity,
14 that transaction is a wholesale one, right?

15 A. Yes, but you kind of did that quickly. You
16 said because ComEd has to resell that --

17 Q. Because ComEd resells the power that it
18 buys, its purchase is a wholesale transaction?

19 A. Its purchase is a wholesale, yes.

20 (Whereupon Mr. Rippie is handing
21 out a document.)

22 MR. RIPPIE: Mr. Rosen, can I ask you --

1 JUDGE JONES: What did you hand out?

2 MR. RIPPIE: Oh, I'm sorry.

3 (Whereupon Mr. Rippie handed a

4 document to Judge Jones.)

5 JUDGE JONES: Thank you.

6 MR. RIPPIE: I'm going to ask that this be

7 marked ComEd Cross Exhibit 9.

8 And, Mr. Rosen, in the interest of

9 saving time, I'm wondering if you might stipulate

10 that this is a true and correct copy of the document

11 produced by your client and one of the sponsors of

12 Mr. Fagan's testimony which it distributed to the

13 public on or about the date that it's dated.

14 MR. ROSEN: Unfortunately I'm at a disadvantage

15 here because I wasn't here at the time.

16 Let me check and run this by the

17 people now at CUB at the office to see if this is

18 a -- I'm sure it's a CUB document but I'm not sure

19 whether it's a complete CUB document. In other

20 words, I don't know what else was part of this or if

21 this was the same document in and of itself.

22 Q. BY MR. RIPPIE: For the sake of this

1 cross-examination, Mr. Fagan, have you ever seen this
2 document before?

3 A. No, I have not.

4 Q. Do you agree, Mr. Fagan, that in Illinois'
5 electricity market, your utility company will buy
6 electricity from generators in the wholesale market?

7 By your you mean customers?

8 A. Generally, your utility buys electricity on
9 the wholesale market or they generate it themselves.

10 Q. And do you also agree that nobody can
11 predict with certainty what markets will do?

12 A. Yes.

13 Q. And I note here that this document predicts
14 that market prices are relatively low and should
15 remain that way, at least until the end of the
16 decade.

17 The stated reason for that is "because
18 there are more power plants in this region than are
19 necessary to meet our power needs."

20 Do you agree with that statement?

21 A. Where are you quoting from?

22 MS. SPICUZZA: Your Honor, at this point I'd

1 like to object based on hearsay and relevancy to the
2 witness's testimony in this docket.

3 MR. RIPPIE: The witness testifies that there's
4 constraints in northern Illinois. He's testifying on
5 behalf of CUB.

6 CUB put out a statement that says
7 there's a surplus at power plants. It's an
8 admission. It's directly relevant to his testimony,
9 and I'm certainly allowed to cross-examine him on it
10 even if it weren't independently admissible, which it
11 is.

12 MR. ROSEN: Well, I just wanted to make one
13 further objection.

14 I think he said that this document
15 predicted that market prices are relatively low.

16 What the document actually says is
17 that today's market prices are relatively low and
18 should remain that way at least until the end of the
19 decade.

20 This was a document that came out in
21 January 2004.

22 MR. RIPPIE: My question was asking him about

1 the next sentence.

2 MR. ROSEN: Okay.

3 MR. RIPPIE: Which is, "Do you agree that that
4 is because there are more power plants in this region
5 than are necessary to meet our power needs?"

6 THE WITNESS: You're going to have to tell me
7 exactly where you're reading from.

8 JUDGE WALLACE: Just a second. You're crossing
9 him on this document which he said he's never seen
10 before, right?

11 MR. RIPPIE: Yeah. I'm not asking -- it was
12 not my intent to ask him about the truth of the
13 preparation of it. I'm asking him to what extent he
14 agrees with it or disagrees with it.

15 JUDGE WALLACE: Okay. The objection is
16 overruled then.

17 Go ahead, Mr. Fagan.

18 THE WITNESS: Can I take a minute or two and
19 read this document before I answer questions on that?

20 JUDGE WALLACE: Yeah, that would probably be
21 okay.

22 THE WITNESS: Thank you.

1 JUDGE JONES: Mr. Rippie, while the witness is
2 reading that, is it your wish that that be marked by
3 the court reporter?

4 MR. RIPPIE: Yeah, and I was just going to walk
5 up with three copies.

6 Mr. Fagan, I'm on the top of Page 2.

7 JUDGE JONES: We haven't really come to the
8 question of whether this will be offered or if it is
9 whether it will be admitted, but in terms of what
10 docket number you want this exhibit to be applicable
11 to, that's just one point of clarification that I
12 want to make sure is in the record.

13 The prefiled testimony sort of speaks
14 for itself from these witnesses, but when it comes to
15 cross of the common witnesses or cross exhibits for
16 common witnesses, I just wanted to make sure the
17 record is clear on what the intent is there.

18 MR. RIPPIE: My current intent would be to
19 offer any cross exhibits that I do offer into
20 evidence in both dockets just as the
21 cross-examination is applicable to both dockets.

22

1 (Whereupon ComEd Cross Exhibit 9
2 in Dockets 05-0159, 05-0160,
3 05-0161 and 0162 was marked for
4 identification as of this
5 date.)

6 (Pause)

7 JUDGE WALLACE: Have you perused the document,
8 Mr. Fagan?

9 THE WITNESS: I have. I'm just wrapping up the
10 last paragraph to make sure there's nothing there in
11 context that I need to know.

12 (Pause)

13 THE WITNESS: Yes, I've looked at it.

14 Q. BY MR. RIPPPIE: Mr. Fagan, my question was,
15 do you agree that... Well, the prefatory sentence
16 says while nobody can predict with certainty what the
17 market will do, today's market prices are relatively
18 low and should remain that way at least until the end
19 of the decade.

20 My question, Mr. Fagan, is, do you
21 agree with the next sentence that says, "That's
22 because there are more power plants in this region

1 than are necessary to meet our power needs."

2 A. I'm not sure that I agree with the first
3 part of it but perhaps of that is hindsight. Today's
4 market prices are relatively low since January 2004
5 and should remain that way at least until the end of
6 the decade, but the second part that says that's
7 because there are more power plants in this region
8 than are necessary, prices wouldn't necessarily
9 remain low.

10 JUDGE WALLACE: Speak into the mike.

11 A. Prices would not necessarily remain low
12 because there are more power plants in the region
13 than necessary to meet needs.

14 With the integration of ComEd system
15 into PJM, the generation located on that system has
16 direct access to the rest of the PJM market, and it
17 would be expected to the extent that those are lower
18 price resources that prices actually might rise even
19 though there is, based on this claim, more power
20 plants in the region necessary to meet power needs.

21 Q. Do you agree --

22 A. I would say that this -- you know, there's

1 a lot here. These two sentences deal with, you know,
2 kind of the whole shebang on what's going on in the
3 region with the generation that's located in northern
4 Illinois and the fact that that generation since May
5 of 2004 or actually beginning January 1, 2007 will
6 have access to a greater or will have access to sell
7 into a broader market.

8 Q. Let me try this one last time.

9 Do you agree that there are more power
10 plants in this region than are necessary to meet our
11 power needs?

12 A. No, I do not necessarily agree. I have not
13 looked carefully at resource adequacy in the northern
14 Illinois region and what it might look like in the
15 forthcoming decade.

16 Q. Do you disagree with that statement or do
17 you just not know?

18 A. I just do not know. It's possible that's
19 the case. It's also possible that there could be
20 some tightness in the regional needs.

21 Q. Do you agree with the next sentence, that
22 the price you -- which I assume is the consumer --

1 pay for electricity is more than just the market
2 price. It's also the utility's cost of delivering
3 it.

4 A. Yes, I agree with that.

5 Q. Hopefully this will go quicker.

6 FERC sets wholesale rates, right?

7 A. If they're not market-based rates, FERC
8 sets them. If they're cost-based wholesale rates,
9 FERC approves someone who applies for a given set of
10 wholesale rates.

11 Q. Well, FERC also approves the tariffs that
12 authorize market-based rates, right?

13 A. That's correct.

14 Q. And it only approves them if it determines
15 that those tariffs are just and reasonable, right?

16 A. That's my understanding.

17 Q. The Illinois Commerce Commission doesn't do
18 either of those things, does it?

19 A. That's my understanding but I'm not, you
20 know, an expert on where the Illinois Commerce
21 Commission's jurisdiction lies.

22 Q. Now, would you agree that when FERC grants

1 market-based rate authority, it has the authority as
2 well to prevent the exercise of market power of using
3 those rates?

4 A. Yes. FERC has the authority to prevent the
5 exercise of market power.

6 Q. And you have no reason whatsoever to
7 believe that FERC will be lax in performing that
8 duty, do you?

9 A. No. I have no reason to believe that.

10 Q. Do you know what the total load in PJM peak
11 load was last year?

12 A. I know what it is this year. Last year,
13 I'd have to subtract out the --

14 Q. What is it this year?

15 A. On the order of 135,000 megawatts.

16 Q. What's the projected full requirements load
17 for ComEd in 2007?

18 A. I don't know that exactly. It's on the
19 order of 22- or 23,000 megawatts. I'm sorry. That's
20 ComEd's total load.

21 Their full requirements load,
22 subtracting out the industrial customers who were

1 taking service themselves, is probably on the order
2 of half of that I think.

3 Q. So you would accept subject to check
4 something like 12 percent of the total PJM market?

5 A. Subject to check, 12,000 out of 135,000,
6 whatever that math is.

7 Q. I was actually being conservative at 12
8 percent, wasn't I?

9 A. I don't know. You're asking me to do the
10 calculations in my head.

11 Q. Well, 12,000 would be 12 percent of a
12 hundred thousand, and you told me the PJM was
13 130,000, so I'm trying to be fair to you so you
14 wouldn't have to do math.

15 A. That's correct. If the peak load of
16 ComEd's default service is 12,000 megawatts, that
17 means that it is less than 12 percent of the PJM's
18 peak load.

19 Q. Now, am I correct that if I am a bidder
20 bidding in an auction, I need to develop my bid
21 several months in advance of the beginning period of
22 time during which I'll be delivering?

1 A. I would think bidders develop their bids
2 right up to the day before the bids are due.

3 Q. I need you to please listen to my question.

4 A. Okay.

5 Q. The bidder will have to develop its bid
6 several months before the date on which it will
7 commence delivery?

8 A. Yes, that's likely as long as the auction
9 itself is held at least several months before the
10 commencement date of delivery.

11 Q. When do you understand the auction will be
12 held?

13 A. September 2006 if it goes ahead.

14 Q. For delivery starting on what date?

15 A. January 1, 2007.

16 Q. And each seller will develop its bid based
17 upon its own expectations of what its costs will be
18 to serve the load should it win amongst other
19 factors, right?

20 A. Yes, that's correct.

21 Q. And those others factors would include its
22 estimate of the cost of any hedges that it intends to

1 purchase, right?

2 A. That's correct.

3 Q. Now, PJM has a number of different ways
4 that bidders can hedge congestion, right?

5 A. Yeah, there are a number of different ways
6 to hedge congestion.

7 One of them, for example, is to use
8 PJM's financial transmission rights or FTRs to hedge
9 congestion.

10 Q. So you've actually answered my next
11 question too.

12 There are also other ways to hedge
13 congestion?

14 A. Yes. You can contract directly for example
15 with, you know, a generator located in a particular
16 area if your responsibility is to deliver to that
17 particular area and as an alternative to purchasing
18 FTRs for example.

19 Q. Now, even unhedged congestion costs that
20 occur after the bid is submitted do not change the
21 price that the supplier charges ComEd for delivery
22 under the auction proposal, do they?

1 A. That's correct.

2 Q. So they also would not change the price
3 paid by customers for the power that ComEd purchases,
4 do they?

5 A. That's correct. Once the auction is done,
6 that price is set. That's my understanding.

7 Q. Now, is it correct, and I'm going to try to
8 avoid duplicating anything Mr. Stahl asked you, that
9 in evaluating market power issues, you would want to
10 consider the physical scale of the market, its size
11 as well as its scope in terms of the number of
12 participants and different products offered in the
13 market?

14 A. Yes.

15 Q. How many different unaffiliated entities
16 sold electricity last year in PJM?

17 A. I don't know.

18 Q. How many different unaffiliated entities
19 sold capacity last year in PJM?

20 A. I don't know.

21 Q. Do you know how many different entities
22 last year submitted bids for either energy or

1 capacity from resources that were deliverable to
2 northern Illinois last year?

3 A. I don't know the answer to that.

4 Q. Do you know how many financial entities
5 actively trade on the PJM markets?

6 A. I don't know the answer to that.

7 Q. You do know, however, that PJM has a
8 capacity resource designation process, right?

9 A. Yes.

10 Q. And an implication of that process is that
11 if a resource is designated as a capacity resource,
12 that means that PJM has determined after an
13 engineering study that it is physically possible to
14 deliver the output of that generation throughout PJM,
15 is that right?

16 A. Yes, under the modeling contract that they
17 use to test for deliverability.

18 That doesn't necessarily imply that
19 that resource will be able to physically deliver to
20 all locations in PJM at all times.

21 Q. There might be unexpected events like a
22 tornado might blow down a transmission line or

1 something, right?

2 A. Yes, but the unexpected events could be
3 less extreme than that.

4 Q. Within the realm of the PJM planning
5 criteria, the statement in my question was true, was
6 it not?

7 A. Yes. For planning purposes, that's their
8 construct, absolutely.

9 Q. Do you know what the total volume of
10 capacity resources were in PJM last year?

11 A. I don't know the exact number. I know that
12 a reserve margin in PJM is on the order of 20 or 25
13 percent, and I believe that somewhere in my testimony
14 I use that number or in response to a discovery.

15 Q. Well, is it fair to say that if the total
16 load is something on the order of 130,000 and the
17 reserve margin is something on the order of 15 to 20
18 that you would expect something on the order of
19 150,000 megawatts capacity resources?

20 A. That's correct.

21 Q. Now, your testimony proceeds from the
22 assumption that northern Illinois is a relevant area

1 in which to do some sort of market analysis, right?

2 A. That's correct.

3 Q. Is northern Illinois a control area?

4 A. No, it is not.

5 Q. It was at the time some of the sources that
6 you cite collected their data however, right?

7 A. Yes. It was a control area I believe up
8 until the point that AEP was integrated into PJM.

9 Q. Since it is no longer a control area, that
10 means that there is no separate dispatch for northern
11 Illinois, is there?

12 A. That's correct.

13 Q. All the generation within northern Illinois
14 is dispatched on a unified basis with all the
15 generation everywhere in the PJM footprint, right?

16 A. Yes, that's correct.

17 Q. And there's also no separate market
18 clearing price developed for the control area other
19 than those LMPs for the individual nodes or for the
20 aggregated trading hubs that PJM normally reports?

21 A. That's right. PJM computes LMPs for nodes
22 and hubs and zones and aggregations, but it does not

1 have a specific control area, ComEd control area
2 price. It does have ComEd load zone. Northern
3 Illinois hub has indications of prices in the
4 northern Illinois region.

5 Q. Those though are just aggregated known
6 prices. There's no separate cleared market for just
7 northern Illinois, right?

8 A. Yes, that's correct. There's no separate
9 cleared market.

10 Q. Now, as hard as this may be for you to
11 imagine, if I were an electron and was traveling over
12 the transmission system, there would be no
13 significance at all to the fact that I crossed the
14 state line, would there be?

15 A. That's correct.

16 Q. It's not like in Texas where there's an
17 asynchronous switch at the border, right?

18 A. That's correct.

19 Q. There's no difference from an operator's
20 perspective between managing the connection between
21 the substation at the state line plant in Indiana and
22 substations in southern Chicago as there would be

1 between managing the flows between two substations
2 within ComEd's service territory, right?

3 A. You're going to have to repeat that one. I
4 just want to make sure that there's not a nuance in
5 there that I missed.

6 Q. To a system operator, there is no network
7 operating significance to the state border, right?

8 A. That's correct.

9 Q. Now, when FERC examines markets in the PJM
10 area, it looks at the PJM footprint as a whole, does
11 it not?

12 A. In FERC's most recent rulings on how to
13 look at granting market-based rate authority, its
14 default for regions that are served by an RTO is the
15 entire RTO region.

16 FERC says that to the extent that
17 intervenors want to make a case that a different
18 footprint should be used, they can do so.

19 Q. Then let me ask you the specific question.

20 You would nonetheless agree with me
21 though that you could identify no instance in which
22 FERC, the Department of Justice, or any state agency

1 has recognized generators in northern Illinois as a
2 relevant set of supplies from which to measure market
3 power?

4 A. Yes, I would agree with that, but if you
5 would just give me a moment, I'd like to look at the
6 discovery response in which I address that question.

7 (Pause)

8 A. If I may, there was a discovery question
9 concerning that issue.

10 Q. I just asked you whether you agreed or
11 disagreed with my statement. If your answer is yes,
12 I'm done. If your answer is no, maybe I have more
13 questions.

14 Do you agree with my statement?

15 A. Yes, I agree with your statement.

16 Q. Are you familiar with Mr. Naumann's
17 testimony concerning changes that have occurred since
18 Commonwealth Edison's integration into PJM and the
19 integration into PJM of AEP and DPNL?

20 A. Yes.

21 Q. You are?

22 A. Yes.

1 Q. And you would agree with Mr. Naumann, would
2 you not, that there have been changes in the ways in
3 which units have been committed?

4 Strike that. I'm going to try that
5 again.

6 Since the integration, the ways in
7 which generation units are committed has changed?

8 A. That's correct; generation units in the
9 region that was recently integrated, yes.

10 Q. And there have also been changes in the
11 ways in which units are redispatched?

12 A. Yes.

13 Q. And there have been changes in the ways
14 that transmission capacity is calculated?

15 A. Yes, there are changes in the way
16 transmission capacity is calculated.

17 Q. And you agree that simultaneous import
18 capability can be increased or decreased as a result
19 of new generation, changed unit commitment, dispatch
20 and redispatch practices and/or seams agreements, do
21 you not?

22 A. Yes.

1 Q. And would you also agree that the
2 integration changed the nature of transmission access
3 improving the ability of the PJM RTO to more
4 efficiently dispatch the system and improve access
5 for non-northern Illinois suppliers to sell to
6 northern Illinois?

7 A. Yes.

8 Q. Is Mr. Naumann correct that throughout your
9 testimony when you use the word constraint, you
10 simply mean a difference in LNP prices at two
11 different locations?

12 A. Generally that's correct but that's not the
13 way that I characterized it.

14 When I used the term constraint, I'm
15 talking about an instance of transmission system
16 limitation that requires the redispatch of
17 generation; in other words, likely requires the use
18 of more expensive generation than would otherwise be
19 required if the constraint did not exist.

20 Usually that results, actually, always
21 that results in a difference in LNP.

22 Q. But you do not require for it to be termed

1 a constraint that it be systematic throughout the
2 region, is that correct?

3 A. That's correct.

4 Q. You do not require that it be prolonged, is
5 that correct?

6 A. That's correct. I use the term constraint
7 to indicate an instance in which transmission system
8 element or elements are causing a need for
9 redispatch.

10 Q. And you do not limit it by the significance
11 of the element or elements to total flow into the
12 load zone, right?

13 A. That's correct.

14 Q. You also did not restrict it based on the
15 amount of the price separation manifest in the LNPs,
16 right?

17 A. That's correct.

18 Q. Now, PJM has a planning process, does it
19 not?

20 A. Yes, they do.

21 Q. One of the purposes of the planning process
22 is to respond to transmission system constraints,

1 right?

2 A. That's correct.

3 MR. RIPPPIE: I think that's all I have. Thank
4 you very much.

5 THE WITNESS: You're welcome.

6 JUDGE WALLACE: Do you have any redirect?

7 MS. SPICUZZA: May we have a moment, Your
8 Honor?

9 JUDGE WALLACE: Yes. Let's take a five-minute
10 break then.

11 (Recess taken.)

12 JUDGE WALLACE: Back on the record.

13 Any redirect?

14 MS. SPICUZZA: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY SPICUZZA:

17 Q. Mr. Fagan, you were asked some questions
18 about the exercise of market power by counsel for
19 ComEd and the existence of contracts between ComEd
20 and Exelon before the auction and then also after the
21 auction.

22 Did you have any further comment?

1 A. Yes. In my testimony, I talked about the
2 presence of the contracts between Exelon and ComEd,
3 current contracts between Exelon and ComEd that
4 expire at the end of 2006 having the effect of
5 helping mitigate any potential for the exercise of
6 market power because Exelon, for example, and whoever
7 they may be purchasing from have obligations to
8 supply so they're not free to just sell into the spot
9 market at whatever price the market will bear.

10 And the question asked had to do with
11 won't there be similar contracts after the auction,
12 and the answer is yes. After the auction, there will
13 likely be contracts in place between financial
14 players or generators in the area agreeing to supply
15 energy to the winning bidders of the auction.

16 And the question was asked, well,
17 doesn't that help to mitigate market power, and at
18 that point in time, yes, to the extent that there are
19 forward contracts in place, there's less of a
20 likelihood for there to be market power exercised in
21 the spot markets.

22 But the important point is what

1 happens in the interim. What likely occurs is that
2 those who win at auction have gone out and then
3 basically secured commitments for forward supply, and
4 those are negotiated arrangements, bilaterally
5 negotiated arrangements that are not transparent, and
6 it's during that period of time that if there is the
7 potential for market power to be exercised, that
8 potential can show up in those forward prices which
9 then results in the price offerings made in the
10 auction by the auction participants to be a little
11 bit higher than they might otherwise have been if
12 that market power potential was not there.

13 That was the point that I wanted to
14 make, and that's in my direct and rebuttal
15 testimonies.

16 MS. SPICUZZA: Thank you. I have nothing
17 further.

18 JUDGE WALLACE: Thank you. Any cross on that?

19 MR. STAHL: Just very briefly if I might, Your
20 Honor.

21 JUDGE WALLACE: Mr. Stahl?

22 MR. STAHL: Thank you.

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RECROSS-EXAMINATION

BY MR. STAHL:

Q. Mr. Fagan, that hypothetical that you just presented on redirect, that depends on a whole series of further assumptions, does it not?

A. What I just described I think is the contracting mechanism. Leaving market power aside for the moment, that's the likely contracting mechanism.

I'm not sure that there's much disagreement around that; that people who are going to participate in the auction are going to go out, and they're going to get a sense of what it's going to cost them to buy power or whether or not they're just going to have to buy power on the PJM spot market and that's how they're going to meet their obligations.

Q. Well, I understand that, but what your concern is is that there is likely to be some potential exercise of market power in the future that will be reflected in the auction prices, correct?

A. That's correct.

1 Q. And that reflection may occur by those who
2 you claim have market power as well as by those who
3 you claim lack market power, correct? Rising tide
4 lifts all ships?

5 In other words, your concern is those
6 who don't have market power may bid because they
7 believe that those who do have market power will
8 somehow increase their bids?

9 A. Not exactly. That's close.

10 My concern is that the prices that
11 auction participants will offer into the auction
12 which results in the auction clearing price, those
13 prices will be based fundamentally on what those
14 participants think they can procure power for.

15 Some of them may think about procuring
16 power just on the spot market. I presume most of
17 them will actually look and see what they can procure
18 power for in the forward markets bilaterally.

19 Maybe I can boil this down.

20 Those who might have the ability to
21 exercise market power could choose to not participate
22 in the auction, could choose to not participate in

1 selling forward any of their power and just sell on
2 the spot market.

3 In that fairly extreme situation, you
4 may have an expectation that if market power was
5 exercised, spot market prices would be high.

6 Those who are going to participate in
7 the auction see that that's the situation and their
8 forward price curves essentially reflect that, and
9 that potential for the exercise of market power gets
10 reflected in the offer prices made at auction.

11 Q. And the market power that you are talking
12 about here is still the market power in the spot
13 markets which encompass a few hours a year from 2007
14 to 2011, correct?

15 A. There has been no careful analysis of the
16 potential for exercise of market power from 2007 to
17 2011 so I wouldn't characterize it as a few hours. I
18 wouldn't characterize in it that way. I wouldn't
19 characterize it until I saw the result of an analysis
20 or I did an analysis that looked carefully at that
21 potential.

22 Q. And different analyses could show different

1 hours of the year in which those people doing the
2 analysis might believe market power would exist,
3 correct, and might be exercised?

4 A. That's correct. I mean, for example,
5 someone might think that prices during summer peak
6 periods are likely to be a little bit higher than
7 they might otherwise expect.

8 Q. And each potential supplier doing that
9 analysis might reach very different conclusions
10 about, one, where, whether market power exists at
11 all, and two, if it does, when it does, correct?

12 A. That's correct.

13 Q. And would you agree that unless all the
14 potential suppliers reach the same conclusion about
15 whether market power existed and the hours of the
16 year in which that market power existed, the concern
17 over prices affected by market power would not really
18 exist?

19 A. No, I wouldn't agree with that.

20 MR. STAHL: I have nothing further.

21 JUDGE WALLACE: Mr. Rippie?

22 MR. RIPPIE: Nothing.

1 JUDGE WALLACE: Thank you, Mr. Fagan. You may
2 step down.

3 (Witness excused.)

4 JUDGE WALLACE: I guess by agreement of the
5 parties, we'll go out of order and take Mr. Bohorquez
6 and Mr. Bollinger.

7 MR. RIPPPIE: Your Honor, before we do that, I
8 would offer into evidence ComEd Cross Exhibit No. 9.

9 JUDGE WALLACE: Is there any objection?

10 MR. ROSEN: Well, we'll stipulate to the
11 authenticity of the document. It is a CUB document,
12 but we object on the basis of relevancy.

13 JUDGE WALLACE: All right. ComEd Cross Exhibit
14 No. 9 will be admitted in 05-0159.

15 (Whereupon ComEd Cross Exhibit 9
16 in Docket 05-0159 was admitted
17 into evidence at this time.)

18 JUDGE JONES: Same objection in the Ameren
19 dockets?

20 MR. ROSEN: Yes. I was going to say this is a
21 January 2004 docket. We're now in September of 2005.

22 The fact that so many things have

1 transpired over that period of time render this
2 document irrelevant. That's the argument.

3 MR. RIPPIE: Far be it from me to ever say that
4 2003 data and 2004 data ought to be the test, but
5 Mr. Fagan's testimony is, you'll forgive the
6 impression, full of it, full of that data, and I
7 think, therefore, it's perfectly relevant.

8 MR. ROSEN: We're not talking about historical
9 data here. We're talking about just mere statements
10 and predictions.

11 JUDGE JONES: Thank you for your arguments.

12 The exhibit is admitted. It's a
13 little closer call I think because the document does
14 focus primarily on ComEd. There was somewhat,
15 initially at least, an authenticity question raised,
16 but I think that that's been stipulated to, so it
17 leaves relevance as the issue.

18 I think the witness testified as an
19 expert, so the line of cross was appropriate and
20 within the latitude that should be provided for
21 crossing a witness on the issues that he testified
22 to.

1 I believe there is sufficient
2 connection between the content of this document and
3 the witness's testimony to meet the relevancy test
4 although I'll acknowledge it's somewhat of a close
5 call.

6 I think that really the arguments go
7 more to the weight to be given to that material than
8 to the actual relevance.

9 So for those reasons, the document is
10 admitted. I would note that it will also bear the
11 identification number, in fact does, ComEd Cross No.
12 9 in the Ameren dockets just for consistency of
13 identification purposes even though there would not
14 be the string of numbered ComEd cross documents in
15 the Ameren dockets to precede it.

16 Thank you.

17 JUDGE WALLACE: Mr. Townsend?

18 MR. TOWNSEND: Thank you, Your Honor.

19 On behalf of the Coalition of Energy
20 Suppliers, we call Mario Bohorquez, P.E. and Wayne
21 Bollinger, P.E. as panel testimony.

22 JUDGE WALLACE: Mr. Townsend?

1 MR. TOWNSEND: Thank you, Your Honor.

2 We would note for the record that

3 these witnesses have already been sworn.

4 MARIO BOHORQUEZ & WAYNE BOLLINGER

5 recalled as witnesses herein, on behalf of Coalition

6 of Energy Suppliers, having been previously sworn,

7 were examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TOWNSEND:

10 Q. I'd ask each of you if you would please

11 identify yourself and spell your last name for the

12 record.

13 A. (BY MR. BOHORQUEZ): Mario Bohorquez

14 (B-o-h-o-r-q-u-e-z).

15 A. (BY MR. BOLLINGER): Wayne Bollinger

16 (B-o-l-l-i-n-g-e-r).

17 MR. TOWNSEND: And, Your Honors, we now tender

18 these witnesses as panel for cross-examination.

19 JUDGE JONES: Thank you.

20 Can you still hear those witnesses in

21 Chicago?

22 MS. SATTER: Yes.

1 JUDGE JONES: All right. If they drop off on
2 you, let us know and we'll do what we need to do.

3 MS. SATTER: Thank you.

4 JUDGE WALLACE: Cross-examination?

5 MR. BERNET: Yes.

6 JUDGE WALLACE: Would you identify yourself,
7 please?

8 MR. BERNET: Richard Bernet.

9 JUDGE WALLACE: Who wants to go first? Do you
10 want to go first, Mr. Reddick?

11 MR. REDDICK: It doesn't matter to me, but
12 Mr. Rippie has been arguing all along that he likes
13 to go last, so I'm perfectly willing to accommodate
14 Mr. Bernet as well.

15 JUDGE WALLACE: All right. Mr. Reddick, if
16 you'd go ahead then.

17 MR. REDDICK: Good morning. Conrad Reddick for
18 the IIEC.

19 WITNESS BOHORQUEZ: Good morning.

20 CROSS-EXAMINATION

21 BY MR. REDDICK:

22 Q. I'm looking at your rebuttal testimony and

1 there you discuss certain solicitations for
2 electricity supply.

3 A. (BY MR. BOHORQUEZ): Is this my rebuttal
4 testimony on the Ameren case or the ComEd case?

5 Q. All right. Well, both but I was trying to
6 avoid separate page references. If we can do that,
7 we can go a lot faster.

8 A. (BY MR. BOLLINGER): Okay. Sounds good.

9 Q. Your testimony on this point is essentially
10 the same in both cases?

11 A. (BY MR. BOHORQUEZ): It's very similar,
12 yes.

13 Q. Okay. And I think we can examine the
14 points I want to talk about without jumping from one
15 to the other.

16 In that testimony, you identify
17 certain solicitations for electricity supply that
18 you're familiar with, correct?

19 A. (BY MR. BOHORQUEZ): That is correct.

20 A. (BY MR. BOLLINGER): Yes.

21 Q. And did either of your companies
22 participate directly in any of those solicitations?

1 A. (BY MR. BOHORQUEZ): Yes.

2 A. (BY MR. BOLLINGER): Yes.

3 Q. One at a time.

4 Mr. Bohorquez, which ones was your
5 company in?

6 A. (BY MR. BOHORQUEZ): I think all of them.

7 Q. Okay. And Mr. Bollinger?

8 A. (BY MR. BOLLINGER): Some of them, not all
9 of them.

10 Q. Which ones were you not in?

11 A. (BY MR. BOLLINGER): I can't specifically
12 identify all of them, my sales director could, but
13 specifically for the State of Illinois and for some
14 of the defense companies.

15 Q. Okay. Mr. Bohorquez?

16 MR. TOWNSEND: I'm sorry. For the record, just
17 so I'm clear on the question that was asked.

18 The question was which ones were you
19 involved with or which ones were you not involved
20 with?

21 MR. REDDICK: I thought it would be quick to
22 list the ones he was not involved in and that's what

1 I asked.

2 A. (BY MR. BOLLINGER): I'm sorry. I was
3 involved in the State of Illinois and the defense
4 companies. Sorry about that. Thanks for the
5 clarification.

6 Q. Okay. In those cases, Mr. Bohorquez, did
7 your company offer a price at a certain point in the
8 solicitation process?

9 A. (BY MR. BOHORQUEZ): Yes, I believe we
10 offer our potential customers a price.

11 Q. And at what point in the process did you
12 make that offer of a price?

13 A. (BY MR. BOHORQUEZ): Well, we have several
14 solicitations. I have to speak more in general terms
15 because I don't have specific recollection of all of
16 them, but generally speaking, there are different
17 kinds of solicitation. There's one kind where, for
18 instance, this organization says gives us a price and
19 based on that price we will select the final
20 supplier.

21 The other kind of solicitation is
22 where the price gets adjusted. That is part of the

1 process. Often times we hear our customers say, will
2 you please refresh your price, and they add
3 sometimes, be sure you sharpen your pencil. So
4 they're looking for a lower price every time we show
5 them a price it seems like.

6 That's typically what we see.

7 Q. Well, let's take that second process where
8 you are engaged in a give and take with your
9 customer.

10 When you give that customer a price,
11 is that price good for as long as it takes to
12 complete the contract?

13 A. (BY MR. BOHORQUEZ): Well, what happens,
14 the completion of the contract process, it often
15 takes definitely more than 30 days in many cases to
16 complete that process, but that price gets refreshed
17 from time to time, and often times, as I said, it is
18 the customer who asks us to refresh the price.

19 Q. If the customer never asks and you're in a
20 process that takes more than 30 days, would the price
21 that you had originally quoted him be the price at
22 which he could get the power?

1 A. (BY MR. BOHORQUEZ): If a customer does not
2 ask us to reprice a refreshed price, it really
3 depends. There are many different factors that would
4 come into the decision-making process. I don't
5 really have one clear answer for all cases.

6 In some instances -- I'll give you one
7 example without sharing much of our competitive
8 advantage -- it is possible that in the expectation
9 of closing a transaction with a customer, we may
10 purchase some supply and therefore hedge some of the
11 price movements that may occur.

12 Sometimes we have a book that is very
13 large, and purchasing of that supply is not really
14 necessary.

15 The point here is that it all depends.
16 Many factors come into the equation.

17 Q. So there are occasions when you give a
18 price and that price remains a valid offer to the
19 customer for 30, 40 days, or whatever it takes to
20 complete the contract?

21 A. (BY MR. BOHORQUEZ): It could be the case.

22 Q. Do you recall a case when that actually was

1 what happened?

2 A. (BY MR. BOHORQUEZ): I don't really have
3 one in mind at this moment. I don't recall one.

4 Q. So it's possible but you don't recall one
5 at the moment?

6 A. (BY MR. BOHORQUEZ): That is correct, yes.

7 Q. Mr. Bollinger, what's the process with your
8 firm?

9 A. (BY MR. BOLLINGER): Mr. Bohorquez did a
10 very good job of summarizing our operations as well.

11 Q. So when you decide to participate in a
12 solicitation by making an offer to a customer, is it
13 your practice that you give them a price and that is
14 the price and you will either complete the contract
15 or not?

16 A. (BY MR. BOLLINGER): It's a complex -- I
17 used to say it's like the dance of the bumblebees
18 where the customer is having control of the process.
19 They may be saying I want to be refreshed. They may
20 want to be refreshed even before all the contract
21 terms are even known or on the table to get some
22 market information.

1 Q. In your company, is it ever the case that
2 your firm, not the customer, initiates the refreshing
3 of a price?

4 A. (BY MR. BOLLINGER): We could.

5 Q. And why do you do that?

6 A. (BY MR. BOLLINGER): The market may have
7 had a significant movement and we want the customer
8 to be aware of that.

9 Q. When you say you want the customer to be
10 aware of that, is that because your price to the
11 customer would change or is it simply informational
12 even though the customer has the option of taking the
13 price you originally quoted?

14 A. (BY MR. BOLLINGER): It's purely
15 informational.

16 Again, I'm just saying that each
17 customer is different. That's why it takes a long
18 period of time potentially to get a contract done
19 with the customer.

20 Q. Does your company ever use what are called
21 notional prices?

22 A. (BY MR. BOLLINGER): How would you define

1 notional? You're just saying what is the market
2 price today? Is that what you mean by notional?

3 Q. Well, if you don't use the term, don't
4 worry about it.

5 The question was, does your company
6 ever use what's sometimes referred to as notional
7 prices?

8 A. (BY MR. BOLLINGER): I'd feel better if I
9 had a definition of notional.

10 I'm assuming it means what is the
11 market price today for my load shape.

12 Q. Using that definition, does your company
13 use notional prices?

14 JUDGE WALLACE: Are you saying notional?

15 MR. REDDICK: Yes.

16 A. (BY MR. BOLLINGER): We've given customers
17 an opportunity to see what the market looks like for
18 the load shape for the time period that they have
19 stated, and they may even change that time period
20 from time to time.

21 Q. And what is the time period typically?

22 A. (BY MR. BOLLINGER): Typically it's for one

1 year but it has been varying quite a bit recently
2 from a period of a month to a couple years.

3 Q. So that is the price for a yearlong
4 contract?

5 A. (BY MR. BOLLINGER): It could be.

6 Q. And that price that you give to the
7 customer would be a valid offer that the customer
8 could accept for what period of time?

9 A. (BY MR. BOLLINGER): It may not be a valid
10 offer. Again, the customer may just be wanting to
11 find out what the price is, and that's a service that
12 we provide to our electric customers and to our gas
13 customers. They just want to know where is the
14 market at today, just an indication.

15 Q. Okay. At the point where you make an
16 offer, you may obtain the power you seek at this
17 price.

18 At that point, how long is that price
19 a valid offer to the customer?

20 A. (BY MR. BOLLINGER): It depends on what
21 type of contract negotiations we've been having.
22 They may say what is the price. They may say, okay,

1 I want a contract with that price today and then it's
2 done on that day.

3 Q. What's the longest you've ever held an
4 offer open?

5 A. (BY MR. BOLLINGER): If you're talking from
6 my electric experience, it's been a few days, five
7 days, and that was based on what the customer wanted.

8 If you're talking about my gas
9 experience, it can be a lot longer than that.

10 Q. Mr. Bohorquez, what's the longest your
11 company has held a price open?

12 A. (BY MR. BOHORQUEZ): I really cannot answer
13 that question because of many things. We operate in
14 many markets. We have many people negotiating with
15 customers.

16 In Illinois, we have 15, 20 people
17 negotiating with customers, and every customer is a
18 different negotiation, so I really cannot tell you
19 what is the maximum number.

20 Q. Okay. Let's limit it to your own
21 experience.

22 In the deals you've personally been

1 involved in, what's the longest time your company has
2 ever held an offer open?

3 A. (BY MR. BOHORQUEZ): We have had
4 negotiations with customers that have taken six
5 months to complete.

6 On the other hand, there have been
7 negotiations with customers that take a few days,
8 four or five days.

9 So to give you one specific answer for
10 one particular type of thing, it's really difficult
11 for me to do that.

12 Q. Well, the question wasn't how long it took
13 you to complete the negotiations. The question is
14 once you make an offer to the customer, you may
15 acquire the power you need at this price, how long
16 does the customer have to accept that price?

17 A. (BY MR. BOHORQUEZ): Conrad, I think I said
18 this already but it really depends. It depends on
19 who the customer is. It depends on the product
20 they're buying. It depends on the term of the
21 product. There's a number of different factors we
22 have to take into account.

1 Q. I understand that.

2 With all those things taken into
3 account, what's the longest you've ever held a price
4 open?

5 MR. TOWNSEND: I'm going to object to this
6 line. It's not relevant.

7 At this point, he's asking for one
8 employee's experience on one deal at some point in
9 time.

10 It's not clear to me how this, first
11 of all, relates to anything in their testimony and
12 secondly, how it's relevant to this proceeding.

13 JUDGE WALLACE: Overruled.

14 A. (BY MR. BOHORQUEZ): One thing that --

15 JUDGE WALLACE: Just answer the question,
16 Mr. Bohorquez, if you would, please.

17 A. (BY MR. BOHORQUEZ): I can't answer the
18 question because I do not get personally involved in
19 deals in closing the transactions.

20 Q. So you don't have personal knowledge of
21 your company's experience regarding how long the
22 prices remain open or why they remain open for that

1 period?

2 A. (BY MR. BOHORQUEZ): I don't have personal
3 knowledge of what is the longest that we have kept
4 the price open.

5 Q. The question was you personally in the
6 deals you have been involved in.

7 MR. TOWNSEND: It's asked and answered. He
8 said that he doesn't know how long that price has
9 been held open in the deals that he's involved with.

10 JUDGE WALLACE: Sustained.

11 Q. BY MR. REDDICK: Mr. Bollinger, when your
12 company makes an offer of a firm price to a customer,
13 is your company concerned about the possibility that
14 the market might move before the customer accepts or
15 rejects your offer?

16 A. (BY MR. BOLLINGER): It depends on the
17 product offered to the customer.

18 Q. But it's a possibility that the market
19 might move before your offer is accepted or rejected?

20 A. (BY MR. BOLLINGER): Yes.

21 Q. Do you take that into account when you make
22 an offer?

1 A. (BY MR. BOLLINGER): It depends on the
2 product.

3 Q. In some cases, you do not take into account
4 the possibility of market movement?

5 A. (BY MR. BOLLINGER): Yes, depending on the
6 circumstance.

7 Q. And when you make an offer to a customer,
8 do you ever limit the time that the offer is valid?

9 A. (BY MR. BOLLINGER): I think with some
10 customers, it's understood that the market may move
11 from when the price is offered, and the customer may
12 come back and call us up and say, is that price still
13 good, and we may say yes, it is.

14 Q. Let me ask the question again.

15 When you make an offer to a customer,
16 do you ever limit the time that the offer is valid?

17 A. (BY MR. BOLLINGER): There can be a time
18 limitation on it. Again, if the market moves, it may
19 not be good, so in that aspect, yes.

20 Q. So sometimes when you make an offer to a
21 customer, you put a time limit on the offer?

22 A. (BY MR. BOLLINGER): Yes.

1 Q. And why do you do that?

2 A. (BY MR. BOLLINGER): The market may move
3 during that time period of that particular offer.

4 Q. And if the customer wanted the offer open
5 for a longer time period than made you comfortable,
6 would you accommodate the customer?

7 A. (BY MR. BOLLINGER): It depends on the
8 circumstances at the time.

9 Q. If you did make the offer available for a
10 longer period of time, would the price necessarily be
11 the same?

12 A. (BY MR. BOLLINGER): It could be the same.

13 Q. And if it changed, what would be the reason
14 for that change?

15 A. (BY MR. BOLLINGER): The underlying cost of
16 the product change or are you talking about my offer
17 price being changed?

18 Q. Is there a risk associated with market
19 movement for prices held over for a longer period of
20 time?

21 A. (BY MR. BOLLINGER): There could be
22 dependent on our view of the market and what our

1 strategy was at the time.

2 Q. And if your view of the market indicated
3 that there was a risk, would you adjust your price
4 accordingly?

5 A. (BY MR. BOLLINGER): Depending on our
6 strategy at the time, we may decide to do that.

7 Q. And would you agree with me that the longer
8 that the price is held open, the more chance there is
9 that the market will move?

10 A. (BY MR. BOLLINGER): Yes, I think that's an
11 observance that the market has an opportunity to move
12 over a longer period of time.

13 MR. REDDICK: That's all. Thank you.

14 JUDGE WALLACE: All right. Would you introduce
15 yourself for the court reporter?

16 MR. BERNET: Sure. Good morning. Richard
17 Bernet on behalf of Commonwealth Edison Company.

18 Your Honor, this cross will apply in
19 both dockets.

20 Good morning, gentlemen.

21 WITNESS BOLLINGER: Good morning.

22 WITNESS BOHORQUEZ: Good morning.

1 MR. BERNET: Just a follow-up on some of the
2 questions that Mr. Reddick asked you.

3 CROSS-EXAMINATION

4 BY MR. BERNET:

5 Q. Directing your attention to your rebuttal
6 testimony, Lines 134 to 139.

7 A. (BY MR. BOLLINGER): Which document for
8 rebuttal?

9 Q. Rebuttal.

10 A. (BY MR. BOLLINGER): I know. Ameren's or
11 ComEd's?

12 Q. Oh, I'm sorry. I'm only going to ask you
13 about questions in ComEd's direct and rebuttal
14 testimony.

15 To the extent that the testimony is
16 the same in the Ameren case, the cross would apply.

17 A. (BY MR. BOLLINGER): What were the line
18 numbers again, please?

19 Q. 134 to 139.

20 JUDGE JONES: One point of clarification here.
21 We really need to know in advance of a line of
22 questioning whether it's intended to apply to both or

1 not.

2 I guess the default assumption is that
3 it applies to both unless otherwise indicated, but we
4 don't want to have to guess about whether it's
5 intended to apply to one docket or both, so just so
6 you're aware of that ground rule.

7 We'll assume that the questions are
8 intended to apply to both dockets unless you indicate
9 to the contrary in which case before commencing and
10 upon concluding that series of questions indicate to
11 the parties.

12 Thank you.

13 MR. BERNET: Okay. And just in case the line
14 numbers -- I apologize. I don't have the Ameren
15 testimony with me, but just in case the line numbers
16 are different in the Ameren testimony for this line
17 of questioning, it relates to the first example of
18 the solicitation that is in the testimony relating to
19 the Defense Energy Support Center, and it's my
20 understanding, Mr. Bollinger, you did not participate
21 in this solicitation, is that right?

22 A. (BY MR. BOLLINGER): I did after

1 clarification from Mr. Townsend.

2 Q. Oh, you did participate in this one?

3 A. (BY MR. BOLLINGER): Yes.

4 Q. Okay. So the solicitation was issued on
5 June 15, 2005.

6 When were the bids due?

7 A. (BY MR. BOLLINGER): I can't recall.

8 A. (BY MR. BOHORQUEZ): I believe the bids are
9 due in the next few weeks.

10 Q. The bids were due in the next few weeks?

11 A. (BY MR. BOHORQUEZ): Are due in the next
12 few weeks.

13 Q. And you don't know when?

14 A. (BY MR. BOHORQUEZ): No, not precisely.

15 One of the reasons is that my
16 understanding is that the Department of Defense is or
17 has recently issued an amendment to their
18 solicitation extending the due date.

19 Q. In your testimony it says that DESC expects
20 to award contracts shortly after September 13, 2005.

21 That's no longer the case, is that
22 right?

1 A. (BY MR. BOHORQUEZ): Actually, it would be
2 farther into the future.

3 Q. You don't know what that date is?

4 A. (BY MR. BOHORQUEZ): That is correct. I
5 don't know.

6 Q. Okay. Is your company planning to submit a
7 bid?

8 A. (BY MR. BOHORQUEZ): Well, I don't know if
9 I should tell you that.

10 MR. TOWNSEND: Your Honor, I'm going to object
11 to this. It's asking for competitively sensitive
12 information on a specific company and a specific
13 customer. I'm not sure of the relevance of that
14 piece of information to the testimony.

15 MR. BERNET: Your Honor, first of all, there's
16 a protective order in this case, and if there's a
17 concern about confidentiality we can go in camera.

18 Second, he's testifying about customer
19 solicitations and how long it takes for customers to
20 make decisions. I think it's definitely relevant
21 about what the company intends to do.

22 JUDGE WALLACE: What line are you on again?

1 MR. BERNET: Lines 134 through 139.

2 JUDGE WALLACE: Of the --

3 MR. BERNET: Rebuttal. I'm sorry.

4 MR. TOWNSEND: And that testimony only goes to
5 the customer's time frame for making a decision. It
6 doesn't go to whether or not these companies intend
7 to participate in a particular solicitation.

8 I don't see what potential relevance
9 that could have to whether or not ComEd's auction
10 proposal should be adopted in this case as to whether
11 or not one RES or another intends to respond to a
12 particular solicitation.

13 MR. BERNET: Well, they're saying that this is
14 relevant. It's in their testimony. They're trying
15 to get the Commission to believe that it takes a long
16 time for them to make decisions.

17 MR. TOWNSEND: Well --

18 JUDGE WALLACE: Wait. Don't talk over each
19 other. In fact, we've had enough argument.

20 (Whereupon an off-the-record
21 discussion transpired at this
22 time between the judges.)

1 JUDGE WALLACE: All right. We think the door
2 has been opened a little bit. If this is sensitive,
3 we'll go in camera. I'm not so sure it is but I'm
4 going to allow this question.

5 MR. TOWNSEND: Okay. And I would request that
6 if there is any specific question about whether a
7 particular RES is going to respond to a particular
8 solicitation, that that testimony be treated as
9 confidential information because it's confidential as
10 to whether or not a RES has that particular strategy,
11 and again, I renew my objection.

12 JUDGE WALLACE: I know, and I overruled your
13 objection, so you don't need to say it again, and we
14 will go in camera.

15 Anyone that's not signed the
16 agreements, please leave the room.

17 JUDGE JONES: I suppose one alternative there
18 too, I mean, the ruling has been made that the door
19 has been open to a certain degree on a series of
20 questions like this by the very nature of the direct
21 testimony.

22 I guess the assumption is that you

1 intended that testimony remain in the record that has
2 opened the door for this line of cross, and if there
3 is some other intent there, well, then that may put
4 this in a slightly different light.

5 MR. TOWNSEND: Your Honor, I'd ask which
6 particular lines actually opened the door to whether
7 or not a particular RES intended to respond to a
8 solicitation by --

9 JUDGE JONES: The ruling has been made. All
10 that question does is essentially challenge the
11 ruling, and so that's --

12 MR. TOWNSEND: No. I was asking for a
13 clarification because if there is a particular line
14 out of that response that you're saying opens that
15 door, then if we eliminated a particular line that
16 that would somehow close that door?

17 JUDGE JONES: You want to propose to remove
18 some of that testimony and if you do, we'll see what
19 others have to say about that and we will deal with
20 it. Otherwise, the ruling stands.

21 JUDGE WALLACE: All right. The next line of
22 questioning will be in camera.

1 JUDGE JONES: You need to make sure everyone in
2 here is, in fact, persons who --

3 MR. TOWNSEND: I have no reason to doubt
4 anyone.

5 JUDGE WALLACE: And is there anyone in Chicago
6 that has not signed onto the confidential -- is there
7 anyone in Chicago?

8 All right. If you walk in in the
9 middle of this question, you have to turn around and
10 walk out.

11 JUDGE JONES: Off the record on the procedure.

12 (Whereupon an off-the-record
13 discussion transpired at this
14 time.)

15 JUDGE WALLACE: All right. Let's go back on
16 the record.

17 MR. TOWNSEND: Your Honors, there is an
18 additional concern with Mr. Bohorquez responding to
19 this question.

20 Even with regards to this panel, the
21 inquiry is for competitively sensitive information,
22 and so I would request that the other part of the

1 panel not even be part of the response here; that
2 Mr. Bollinger step outside of the room as well as any
3 other competitor step outside of the room because
4 this is competitively sensitive information as to the
5 strategy of a retail electric supplier with regards
6 to a particular customer.

7 JUDGE JONES: Off the record again.

8 (Whereupon an off-the-record
9 discussion transpired at this
10 time.)

11 JUDGE WALLACE: All right. Let's go back on
12 the record, and this will be on the public
13 transcript.

14 MR. BERNET: Mr. Bohorquez, this question is
15 directed to you.

16 Q. In connection with the Defense Energy
17 Support Center solicitation that appears on Page 8 of
18 your rebuttal testimony, is that a solicitation where
19 you give a price that would be set for a set period
20 of time?

21 MR. TOWNSEND: And again, Your Honors, we
22 object to this question as asking for a highly

1 confidential, competitively sensitive piece of
2 information.

3 JUDGE WALLACE: What did you talk off the
4 record? I already ruled on this objection.

5 MR. TOWNSEND: Right, and we understand that
6 that objection has been ruled upon and --

7 JUDGE WALLACE: Well, what are you doing then?

8 MR. TOWNSEND: To the extent that this witness
9 has highly confidential information that this witness
10 would respond to in response to this question, I
11 would ask that the witness inform us first that it is
12 highly confidential at which point our understanding
13 is we'll have to pull this panel down and put them on
14 later on in the afternoon.

15 So if this witness has highly
16 confidential information, then that is the procedure
17 that we've agreed to.

18 JUDGE JONES: All right. So what is it that
19 you want to do at this time?

20 MR. TOWNSEND: Direct the witness to inform the
21 Commission as to whether or not this witness has in
22 his knowledge base the highly confidential

1 information.

2 MR. BERNET: That wasn't the question.

3 WITNESS BOHORQUEZ: Let me see if I can answer
4 that question.

5 JUDGE WALLACE: No. I'm not sure what you've
6 just stated. It's overruled.

7 Answer the question, please.

8 WITNESS BOHORQUEZ: I don't have any
9 confidential information on the one that we discussed
10 here. The answer you're seeking is public
11 information.

12 My understanding is that the customer
13 is seeking a price to be good for 48 hours.

14 The point is that customers need --

15 MR. BERNET: Okay. That's it.

16 Q. So in that particular case, your price
17 would be open for 48 hours?

18 A. (BY MR. BOHORQUEZ): That's my
19 understanding of the terms of the solicitation.

20 However, there are --

21 MR. BERNET: There's no question pending.

22 JUDGE WALLACE: There's no question pending.

1 Q. BY MR. BERNET: Directing your attention to
2 the second example you give, the Department of
3 Central Management Services, the request for
4 proposal, you participated in that solicitation, is
5 that right?

6 A. (BY MR. BOHORQUEZ): On which lines?

7 Q. I'm sorry. Lines 141 to 148 of your
8 rebuttal.

9 A. (BY MR. BOHORQUEZ): I understand that my
10 company participated in that solicitation.

11 Q. And when were the solicitations, when were
12 the bids due in that case?

13 A. (BY MR. BOHORQUEZ): I don't recall. I
14 probably never knew that.

15 Q. Okay. So it was at some point between
16 May 27, 2005 and June 28, 2005, right?

17 A. (BY MR. BOHORQUEZ): It's possible. As I
18 said, I never reviewed the solicitation myself. I am
19 aware of the solicitation, and some of the facts you
20 see here, those I can attest to.

21 Q. Right. But I mean, it wouldn't make sense
22 for you to submit a bid price before the request for

1 proposals came out, would it?

2 A. That's correct.

3 Q. So at some point between May 27th and
4 June 28th, the Department of Central Management
5 Services made a decision based upon price, didn't it?

6 A. (BY MR. BOHORQUEZ): I don't know the
7 answer to that question.

8 Q. Well, do you know whether or not they
9 announced that a vendor -- that they made an
10 announcement of a successful vendor on June 28, 2005?

11 MR. TOWNSEND: I believe that misstates the
12 testimony.

13 MR. BERNET: Do you understand that question?

14 WITNESS BOHORQUEZ: Yeah, I think I do. My
15 understanding is that --

16 JUDGE JONES: Excuse me. Is there an objection
17 pending?

18 MR. TOWNSEND: Yes. I object to the
19 mischaracterization of the testimony.

20 MR. BERNET: I'll restate it.

21 Q. The solicitation stated an anticipated date
22 of announcement of the successful vendor on June 28,

1 2005, didn't it?

2 A. (BY MR. BOHORQUEZ): Yes. That's what it
3 says.

4 Q. And so my question is, did the state issue
5 an announcement on that date?

6 A. (BY MR. BOHORQUEZ): I don't believe so.

7 Q. Do you know when that was announced?

8 A. (BY MR. BOHORQUEZ): I understand that it
9 was announced after that date.

10 Q. You don't know when?

11 A. (BY MR. BOHORQUEZ): Close to August 1st.

12 Q. Close to August 1st?

13 A. Correct.

14 Q. Do you know when the Department of Central
15 Management Services made a decision on what price to
16 accept?

17 A. (BY MR. BOHORQUEZ): No, I don't.

18 Q. And how long did Constellation keep its
19 price open in that case?

20 A. (BY MR. BOHORQUEZ): I really don't know,
21 and the reason why is because -- and this is my
22 understanding again -- we submitted a proposal that

1 was responsive to the solicitation, and it took the
2 state almost all the way to August 1st to come back
3 and say that our proposal was not accepted.

4 Q. Do you know whether or not the contract was
5 executed on August 1st?

6 A. (BY MR. BOHORQUEZ): My understanding,
7 that's the case, yes.

8 Q. Do you know how far in advance of August --
9 strike that. Withdrawn.

10 Referring you to the CHA example at
11 Lines 151 through 161, did Constellation submit a bid
12 price in that case?

13 A. Yes.

14 Q. And did Constellation submit a proposal by
15 May 22, 2003 in that case?

16 A. (BY MR. BOHORQUEZ): I don't know the
17 specifics of that process aside from what's written
18 here.

19 Q. Well, that's what I'm asking you.

20 A. (BY MR. BOHORQUEZ): If it is written here,
21 that must be the case.

22 Q. Okay. And what does it mean that a letter

1 of intent was received on June 24, 2003?

2 A. Typically a letter of intent says that the
3 buyer and the seller intend to go through with the
4 process provided that certain things happen.

5 Q. So would it be fair to say that the CHA had
6 selected a contractor by June 24, 2003, selected a
7 supplier, I'm sorry?

8 A. (BY MR. BOHORQUEZ): It is possible, yes.

9 Q. Well, is the point of a letter of intent in
10 this situation to identify a supplier and a price?

11 A. (BY MR. BOHORQUEZ): Not necessarily.

12 Q. Well, do you know one way or the other in
13 this case?

14 A. (BY MR. BOHORQUEZ): No.

15 Q. Directing your attention to the DESC
16 firming lab solicitation that appears at Lines 163 to
17 171, can you tell me what the technical response due
18 is that's identified at Line 168? Do you know what
19 that means?

20 A. (BY MR. BOHORQUEZ): I think I do. It has
21 to do with comments that the government, in this
22 particular case the firming lab, was seeking from

1 quotation suppliers how to do the technical aspects
2 of the solicitation.

3 Q. Did it involve the price?

4 A. (BY MR. BOHORQUEZ): I don't believe so.

5 Q. Were you personally involved in that
6 solicitation?

7 A. (BY MR. BOHORQUEZ): I was an advisor to
8 people who were involved personally with the
9 government.

10 Q. When were bids do in that case?

11 A. (BY MR. BOHORQUEZ): If it is stated here,
12 it's whatever is stated here.

13 Q. No, it's not stated here.

14 A. (BY MR. BOHORQUEZ): I don't know.

15 Q. Directing your attention to the DuPage --
16 I'm sorry.

17 Mr. Bollinger, you were involved in
18 that solicitation?

19 A. (BY MR. BOLLINGER): Under DuPage County or
20 which one?

21 Q. No, the Department of Energy firming lab
22 that appears at Lines 163 to 170.

1 A. (BY MR. BOLLINGER): Yes.

2 Q. Do you know when the bids were due?

3 A. (BY MR. BOLLINGER): No, I do not. My

4 sales director typically would know that information

5 but not myself.

6 Q. You weren't personally involved?

7 A. (BY MR. BOLLINGER): As an advisor I was

8 involved.

9 Q. But you don't recall the date?

10 A. (BY MR. BOLLINGER): No, I do not.

11 Q. Mr. Bollinger, was your company involved in

12 the DuPage County complex solicitation?

13 A. (BY MR. BOLLINGER): Not to my knowledge.

14 Q. Mr. Bohorquez, was your company?

15 A. (BY MR. BOHORQUEZ): Yes, we were.

16 Q. And bids were due in that case on

17 April 14th?

18 A. (BY MR. BOHORQUEZ): Yes. That's what it

19 says.

20 Q. And how long did Constellation leave its

21 price open with that bid?

22 MR. TOWNSEND: I object to that. It's calling

1 for confidential information.

2 MR. BERNET: Go in camera.

3 WITNESS BOHORQUEZ: Let me answer the question.
4 I don't know.

5 MR. TOWNSEND: I withdraw the question.

6 JUDGE WALLACE: I'm sorry. What was your
7 answer?

8 WITNESS BOHORQUEZ: I don't know.

9 Q. BY MR. BERNET: Do you know whether or not
10 the award date occurred on April 18, 2005?

11 A. (BY MR. BOHORQUEZ): That's what we have
12 stated in the record.

13 Q. Did Constellation win that contract?

14 A. (BY MR. BOHORQUEZ): I think so.

15 Q. Now, directing your attention to your
16 proposal in this case, under ComEd's proposal, a
17 supplier that wins the tranche will be required to
18 enter into a contract with ComEd a day or two after
19 the auction results are announced, right?

20 A. (BY MR. BOHORQUEZ): Is that what we say?
21 What line is that?

22 Q. No. I'm just asking if you know that.

1 MR. TOWNSEND: Does this go to Dr. O'Connor's
2 testimony?

3 MR. BERNET: Did you understand that question?
4 This goes to your testimony.

5 MR. TOWNSEND: Can you please provide me with a
6 reference?

7 MR. BERNET: I don't have a reference to the
8 testimony.

9 MR. TOWNSEND: Object to being beyond the scope
10 of these witnesses' testimony.

11 Q. BY MR. BERNET: Well, isn't it true that
12 you're asking the Commission to approve a 75-day
13 window for customers to make a decision about the
14 CPP-A auction product?

15 A. (BY MR. BOHORQUEZ): We have stated in a
16 number of times in our testimony that 30 days is not
17 enough time for most customers to make a decision.
18 We feel that 75 days would be a more appropriate
19 period.

20 Q. Right. So the issue of how long a supplier
21 has to enter into a contract -- do you understand how
22 long a supplier has to enter into a contract with

1 ComEd?

2 A. (BY MR. BOHORQUEZ): I believe it would be
3 as short as 17 months or several years.

4 Q. No. Maybe I didn't state the question
5 correctly.

6 My question is, you understand that
7 there is a bid, there is an auction in this case,
8 right? ComEd is proposing an auction?

9 A. (BY MR. BOHORQUEZ): Yes.

10 Q. And suppliers will bid on the auction for
11 tranches, right?

12 A. (BY MR. BOHORQUEZ): That is my
13 understanding, yes.

14 Q. And there will be an award of tranches to
15 suppliers as a result of the auction, right?

16 A. (BY MR. BOLLINGER): Yes.

17 A. (BY MR. BOHORQUEZ): Right.

18 Q. And my question is, do you know how long
19 after the award of the tranches suppliers will have
20 to sign contracts to supply power to ComEd?

21 A. (BY MR. BOHORQUEZ): I think it is a few
22 days.

1 Q. Okay. And it's your understanding that the
2 supplier will be obligated to provide that power at
3 the end of the 75 days that you're proposing, right?

4 A. (BY MR. BOHORQUEZ): I believe those are
5 the terms of the contract.

6 A. (BY MR. BOLLINGER): I think it will be
7 delivered, start delivery in January, so not after
8 the 75 days but when the delivery period starts.

9 Q. Okay. But the amount of power that the
10 supplier has to deliver will not be known during that
11 75-day period, isn't that right?

12 A. (BY MR. BOLLINGER): I don't think it will
13 be known at any point in time. It will depend on
14 what the customer's usage profile will be for that
15 tranche, and that's whether it's 30 days or 75 days.

16 Q. Mr. O'Connor testified yesterday that
17 there's a risk premium associated with suppliers
18 holding offers open for 75 days.

19 Do you disagree with that?

20 MR. TOWNSEND: I'm going to -- unless you can
21 provide me with a transcript citation, I believe that
22 that does not correctly characterize Dr. O'Connor's

1 testimony.

2 MR. BERNET: Subject to check.

3 WITNESS BOHORQUEZ): I agree with our attorney
4 that I don't believe that was --

5 JUDGE JONES: Just a minute.

6 MR. TOWNSEND: I don't believe that that
7 accurately summarizes Dr. O'Connor's testimony.

8 I'd be happy, if there is a transcript
9 of that and you would like to provide me with a copy
10 of that transcript, I'd be happy to take a look at it
11 to see whether or not it does mischaracterize, but my
12 recollection is that that is not --

13 MR. BERNET: I'll rephrase the question.

14 Q. Is it your testimony that there is no risk
15 premium associated with the supplier holding supply
16 contract open at a set price for 75 days?

17 A. (BY MR. BOHORQUEZ): No.

18 Q. No risk premium, right?

19 A. (BY MR. BOHORQUEZ): No. That is not in
20 our testimony.

21 Q. Okay. Is it your belief that there would
22 be a risk premium associated with a supplier holding

1 a price open for 75 days?

2 A. (BY MR. BOHORQUEZ): What we have said in
3 our testimony is that the MVI methodology that we are
4 currently operating and that has been approved by the
5 Illinois Commerce Commission does not have any value
6 associated with holding the price open for 75 days as
7 it is currently with the ComEd provisions of the PPO.

8 MR. BERNET: Move to strike. I wasn't asking
9 about that. I was asking about in this auction. I
10 wasn't asking about the PPO.

11 JUDGE WALLACE: That last answer is stricken.

12 WITNESS BOLLINGER: I think that with the
13 suppliers that are participating in the auction that
14 they may or may not assess premium for a 75-day
15 window.

16 Q. BY MR. BERNET: As a hypothetical, if a
17 supplier added a 20 percent premium to its price to
18 account for the additional days between ComEd's
19 proposed 30-day window and the 75-day window you
20 suggest, would you still support the 75-day window?

21 A. (BY MR. BOHORQUEZ): Well, yeah, of course,
22 because that hypothetical would suggest that a

1 supplier would not win any tranches.

2 Q. Do you agree with that Mr. Bollinger?

3 A. (BY MR. BOLLINGER): Yes.

4 Q. And if the suppliers do, in fact, include a
5 risk premium in the CPP-A auction price, that would
6 tend to make the auction price higher, right?

7 A. (BY MR. BOHORQUEZ): If indeed the market
8 clearing price included such a premium, yes, it
9 would.

10 Q. Now, you testified that the Commission
11 should adopt your proposal to have the 75-day window
12 as the election window for customers to decide
13 whether they take CPP-A service, right?

14 A. (BY MR. BOHORQUEZ): That is correct.

15 Q. And it's your testimony that the Commission
16 should do this because customers in this category
17 want the 75-day window, right?

18 A. (BY MR. BOHORQUEZ): Among other things,
19 yes, but that's the primary reason. Customers need
20 that time.

21 Q. Do you know how many customers fall into
22 the category of between 400 kW and 1 megawatt?

1 A. (BY MR. BOHORQUEZ): Not off the top of my
2 head.

3 Q. Do you know whether it's 10,000 customers?

4 A. (BY MR. BOHORQUEZ): I think it's several
5 thousand.

6 Q. Not one of those customers has intervened
7 in this case and testified that it wants the 75-day
8 window, has it?

9 A. (BY MR. BOHORQUEZ): I believe some
10 customers have. I believe that BOMA has articulated
11 that they need the 75 days.

12 Q. Anyone else?

13 A. (BY MR. BOHORQUEZ): Not to my knowledge.

14 Q. Your testimony contains no survey of
15 customers that indicates that they prefer a 75-day
16 window, right?

17 A. (BY MR. BOHORQUEZ): Our testimony does not
18 include a survey.

19 Q. Mr. Bohorquez, how many retail contracts
20 with customers have you negotiated in your career?

21 A. (BY MR. BOHORQUEZ): Myself?

22 Q. Yes.

1 A. (BY MR. BOHORQUEZ): A handful.

2 Q. Ten?

3 A. (BY MR. BOHORQUEZ): Fewer than that.

4 Q. Five?

5 A. (BY MR. BOHORQUEZ): Yes.

6 Q. When was the last time you did that?

7 A. (BY MR. BOHORQUEZ): When I was negotiating

8 yesterday.

9 Q. How long did that negotiation last?

10 A. (BY MR. BOHORQUEZ): Well, negotiation has

11 taken about two and a half years.

12 Q. When was the last time before that that you

13 negotiated a contract?

14 A. (BY MR. BOHORQUEZ): I don't really recall

15 and I'll tell you why.

16 I am essentially an advisor to the

17 people who do negotiations of contracts, so I don't

18 really get involved with this sort of negotiations

19 unless we have a very specific reason for that.

20 Q. Would you consider that price is an

21 important factor for customers?

22 A. (BY MR. BOHORQUEZ): Yes, price is an

1 important factor. Product, quality of the product,
2 different terms, those go hand in hand.

3 Q. And you've negotiated prices for retail
4 sale contracts?

5 A. (BY MR. BOHORQUEZ): I have.

6 Q. What's the longest period of time it took
7 to negotiate a price?

8 A. (BY MR. BOHORQUEZ): In the ones that I
9 have been involved with, the ones that have to close,
10 it took several months.

11 Q. Can you tell us what the average length of
12 time is to negotiate a price?

13 A. (BY MR. BOHORQUEZ): No, I don't have that
14 information. I don't think we have computed that
15 information.

16 Q. Now, to the extent that the default price
17 resulting from the auction has premiums, that price
18 would likely be higher than if it didn't have
19 premiums, right?

20 A. (BY MR. BOHORQUEZ): I think so, yes.

21 Q. And the RESs, the companies, and the
22 coalition compete against what will ultimately be the

1 auction price, right?

2 A. (BY MR. BOHORQUEZ): The products that a
3 utility would offer as a default type of product
4 would be one of the products that would be competed
5 against.

6 Q. And so the higher the default price, the
7 more likely you will need to get customers, right?

8 A. (BY MR. BOLLINGER): Are you directing this
9 line of questions only to Mario or to both of us?

10 You started out with Mr. Bohorquez as
11 a request, and I don't know if I'm allowed to chime
12 in here or not.

13 MR. BERNET: Well, it was directed to
14 Mr. Bohorquez.

15 WITNESS BOHORQUEZ: I'm sorry. I forgot what
16 your question was.

17 MR. BERNET: Can you read it back, please?

18 JUDGE WALLACE: No. You have to request it to
19 be read back. I thought I laid that out when you
20 started. I don't want to have her go back and flip
21 through the pages. If you know the question, ask it.

22 MR. BERNET: Okay.

1 Q. To the extent that the default price is
2 higher than it otherwise would be, that increases the
3 chances that a RES will be able to sign up customers,
4 isn't that right?

5 A. (BY MR. BOHORQUEZ): There is a slight
6 improvement of the chance because we'll have more
7 time to show our customers the value of the
8 competitive market, the value that we can bring to
9 those customers.

10 If customers are faced with a decision
11 in less than 30 days or less because the utility has
12 to offer it something, it will give us the
13 opportunity to be upfront with those customers and
14 show them options, perhaps a different term, maybe a
15 shorter term, maybe something that shares the risk.

16 All of those things would not be
17 available to those customers if we don't have the
18 time to show them those products.

19 So the answer to your question is,
20 yes, marginally.

21 Q. Mr. Bollinger, same question for you.

22 You'll be competing against the

1 default prices, right?

2 A. (BY MR. BOLLINGER): That is correct.

3 Q. And to the extent the default prices are
4 high and you can undercut those, you'll get more
5 business, right?

6 A. (BY MR. BOLLINGER): Not necessarily. It
7 depends on -- you're talking about a specific
8 product, and that is the product that ComEd is
9 offering up to the customer which is a fixed price
10 for a one-year term.

11 And for some customers, they may not
12 want that product. They want to be exposed to
13 different products, and they're going to look at
14 those different products compared to that product and
15 look at the prices and say which one would they pick.

16 Q. So is it your testimony that it is not in
17 the coalition's best interest to have a high default
18 price?

19 A. (BY MR. BOLLINGER): No. It's marginally,
20 yes, like Mr. Bohorquez said.

21 JUDGE WALLACE: It's what, it's marginal?

22 A. (BY MR. BOLLINGER): Marginally.

1 MR. BERNET: I don't have any other questions
2 on that.

3 Q. Now, you're familiar, Mr. Bohorquez, with
4 the existing PPO rider I take it?

5 A. (BY MR. BOHORQUEZ): Somewhat, yes.

6 Q. Who is the supplier of energy on the PPO?

7 A. (BY MR. BOHORQUEZ): My understanding is
8 that Exelon Generation is the supplier.

9 Q. And that supplier provides energy and power
10 to ComEd under a power purchase agreement, right?

11 A. (BY MR. BOHORQUEZ): That's my
12 understanding, yes.

13 Q. Do you know when that agreement was
14 executed?

15 A. (BY MR. BOHORQUEZ): I don't really
16 remember.

17 Q. You don't know whether it was this year or
18 last year?

19 A. (BY MR. BOHORQUEZ): There's a history of
20 this agreement, and I'm afraid I will mess it up if I
21 try to give you an answer.

22 Q. And the PPO price is determined

1 administratively, isn't it?

2 A. (BY MR. BOHORQUEZ): Some aspects of that
3 are administrative, yes.

4 Q. And it's based on a formula, is it not?

5 A. (BY MR. BOHORQUEZ): It's based on a
6 formula, several formulas actually that take into
7 consideration market price.

8 Q. And that formula contains no factor for
9 migration risk, does it?

10 A. (BY MR. BOHORQUEZ): I agree with you. I
11 don't believe that's the case.

12 Q. Are you familiar with the PPO revisions
13 being made in connection with this docket?

14 A. (BY MR. BOHORQUEZ): Some of them, yes.

15 Q. And it's true, isn't it, that ComEd is
16 suggesting that the PPO, the window for customers
17 making a decision on the PPO is 30 days, isn't it?

18 A. (BY MR. BOHORQUEZ): Yes.

19 MR. BERNET: I have nothing further.

20 JUDGE WALLACE: Thank you.

21 Did Ameren have any or did they waive?

22 I guess they waived.

1 Any redirect?

2 MR. TOWNSEND: If I could have a couple of
3 minutes, Your Honor.

4 JUDGE WALLACE: You can have a couple minutes.

5 MR. TOWNSEND: Thanks.

6 JUDGE WALLACE: In an out of the room signal,
7 Ameren has no cross.

8 (Pause)

9 JUDGE WALLACE: Back on the record.

10 Redirect.

11 MR. TOWNSEND: Thank you Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. TOWNSEND:

14 Q. Mr. Bohorquez and Mr. Bollinger, do you
15 recall Mr. Reddick asking you questions about the
16 length of time that you hold your contracts open?

17 A. (BY MR. BOHORQUEZ): Yes.

18 A. (BY MR. BOLLINGER): Yes.

19 Q. Do you believe that that is the relevant
20 inquiry for this proceeding?

21 A. (BY MR. BOHORQUEZ): No. What is relevant
22 is how long customers need to make decisions.

1 Our experience would suggest that 30
2 days is not sufficient time for customers to make a
3 decision, especially an important decision like this.

4 In addition to that, we're looking at
5 the future. What our customer is going to be facing
6 once we have this competitive procurement process in
7 place, customers will have more choices from the
8 utility itself. I can think of three choices: Fixed
9 price, 17 months initially. That would be one
10 product. The second one we have would be the PPO, a
11 one-year product, and then we also have realtime
12 hourly prices.

13 So we have at least three choices from
14 the utility for all type of products for a customer.

15 In addition to that, if you want to
16 add offers from other suppliers, that complicates our
17 customers' lives life quite a bit.

18 In the past, 30 days hasn't worked,
19 and in the future it will probably work less.

20 Q. Mr. Bollinger did you have something to
21 add?

22 A. (BY MR. BOLLINGER): The only thing is that

1 with the 75 days, it's a time period that our
2 customers are used to. It has been proven in the
3 past to be helpful for people to make decisions, and
4 why do something novel like changing it to 30 days?

5 Q. Do you remember the questions from
6 Mr. Bernet about the recommendation of the Coalition
7 of Energy Suppliers as to the length of time that the
8 enrollment window should be left open?

9 A. (BY MR. BOHORQUEZ): Yes.

10 Q. All right. And what is the coalition's
11 recommendation in terms of the amount of time that
12 the enrollment window should be left open?

13 A. (BY MR. BOHORQUEZ): Our recommendation,
14 really, the message is that 30 days is not sufficient
15 time; that more time is better.

16 Q. And Mr. Bernet asked questions about the
17 premium associated with the 75 days.

18 Do you have any reason to, or what is
19 the coalition's position with regards to that
20 premium?

21 A. (BY MR. BOHORQUEZ): A couple of things.

22 One is that no one, aside from a staff

1 member from the Illinois Commerce Commission, has
2 made an attempt to quantify that premium.

3 My understanding is it's somewhere in
4 the neighborhood of four percent for each ten
5 additional days, and that's something that it took a
6 member of the staff to calculate that number but I'm
7 not surprised.

8 The thought here is that, at least my
9 thinking is that in a competitive situation, those
10 premiums, those costs will be squeezed out in a
11 competitive environment. It happens to us when we
12 offer our customer surprises. As we said earlier, we
13 go back and forth with customers and that tends to
14 squeeze out any of those sort of premiums.

15 What we have to be careful with is
16 that our marginal costs -- in the case of the
17 suppliers it will be cost of fuel for instance --
18 that that is covered. Optionality or other ability
19 that suppliers may have is not really marginal cost
20 if you have already invested in the infrastructure to
21 provide the supplier with optionality.

22 Bottom line is the sum cost at that

1 point, and then it's a matter of whether the supplier
2 can sell a large block of power forward to a good
3 buyer and lock in those prices.

4 Q. Mr. Bollinger, do you have anything to add
5 about the length of the enrollment window and the
6 premium that's associated with leaving the enrollment
7 window open?

8 A. (BY MR. BOLLINGER): Only just that on my
9 gas experience that I've had, what Mario stated is
10 correct, that some suppliers, they will take that
11 premium out.

12 Q. And is it your understanding -- I'm sorry.
13 What is your understanding with regards to the 75
14 days for an enrollment window versus a somewhat
15 shortened period of time, Mr. Bohorquez?

16 A. (BY MR. BOHORQUEZ): The 75 days will be
17 good to have. If you have it 30 days, it's not
18 sufficient time.

19 A. (BY MR. BOLLINGER): I agree.

20 Q. In discussing the default rates with
21 Mr. Bernet, he indicated that or he inquired as to
22 whether you would be marginally better to have higher

1 default rates.

2 Why is it that you believe that you
3 would only be marginally better?

4 A. (BY MR. BOHORQUEZ): Well, it so happens
5 that we have a competitive market for retail
6 customers in northern Illinois, and if there is
7 additional head room, if you call it that way, our
8 competitors will squeeze that out because we compete
9 and people like my colleague here and other retail
10 marketers will squeeze the market out, and at the end
11 of the day, we'll be just be competing fiercely
12 trying to get customers.

13 A. (BY MR. BOLLINGER): I concur.

14 MR. TOWNSEND: No further redirect.

15 JUDGE WALLACE: Thank you.

16 Mr. Reddick, any recross?

17 MR. REDDICK: Just a little.

18 RE CROSS-EXAMINATION

19 BY MR. REDDICK:

20 Q. If I understood what you said in response
21 to Mr. Townsend's questions, you don't deny that
22 there might be a risk premium associated with holding

1 a price open longer. You just believe that it will
2 be small because it will be squeezed out, is that
3 correct?

4 A. (BY MR. BOHORQUEZ): No. I don't deny that
5 there is a theoretical risk premium.

6 Whether the risk premium shows up in
7 the final price is a different story, and the reason
8 I'm saying it may not show up in the final price is
9 because if we have a competitive auction, the
10 competition will squeeze that premium down to the
11 bare minimum.

12 Q. I thought that was what I said.

13 There is the possibility for risk
14 premium, correct?

15 A. (BY MR. BOHORQUEZ): There's a theoretical
16 possibility, yes.

17 Q. There's a real possibility.

18 A. (BY MR. BOHORQUEZ): All right, if you like
19 to call it that way.

20 Q. It's your position that the risk premium
21 will be small because of competition?

22 A. (BY MR. BOHORQUEZ): Yes. It could be as

1 small as zero.

2 Q. Okay. And if you're wrong about the effect
3 of competition, customers would see a higher price,
4 correct?

5 A. (BY MR. BOHORQUEZ): Or even lower prices.

6 Q. Not with -- well, I won't even go there.

7 If you're wrong about the presence of
8 a risk premium, if there is a larger risk premium
9 than you expect, customers will see a higher price,
10 correct?

11 A. (BY MR. BOHORQUEZ): Customers will see a
12 higher price from the default product offered by a
13 utility.

14 Whether they see a higher price from
15 competitors like ourselves, I doubt it.

16 Q. Let me focus you on the bundled service of
17 the utility that we're conducting the auction for,
18 okay?

19 A. (BY MR. BOHORQUEZ): All right.

20 Q. In that situation, if the bidders include a
21 risk premium, notwithstanding your expectations, the
22 result of the auction would be higher, correct?

1 A. (BY MR. BOHORQUEZ): The simple fact that
2 bidders include a risk premium and assuming that the
3 market clearing price includes such a premium, yes.

4 MR. REDDICK: That's all.

5 JUDGE WALLACE: Mr. Bernet?

6 RECROSS-EXAMINATION

7 BY MR. BERNET:

8 Q. You give five examples of solicitations in
9 your rebuttal testimony, isn't that right?

10 A. (BY MR. BOHORQUEZ): I don't recall how
11 many there are but there are several.

12 MR. TOWNSEND: Objection. Beyond the scope of
13 redirect.

14 MR. BERNET: No, it isn't.

15 JUDGE WALLACE: At this point it is.

16 MR. BERNET: Well, he was asking about how much
17 time customers need to make a decision on supply.

18 JUDGE WALLACE: Right.

19 MR. BERNET: He opened that door.

20 JUDGE WALLACE: No, he didn't. You can ask him
21 about the length of time but you can't go back to the
22 customers in the other testimony. This is on

1 redirect.

2 Q. BY MR. BERNET: Now, you testified about a
3 theoretical premium associated with the 75 days.

4 It's not theoretical. You would
5 expect that there would be a premium with a 75-day
6 window, isn't that right?

7 A. (BY MR. BOHORQUEZ): This is the way it
8 works.

9 When the suppliers try to estimate
10 what price they can expect to clear in the auction,
11 it would include premiums for migration, premiums for
12 weather uncertainty, load uncertainty, 75-day window
13 and so forth and so on. That would go into their
14 hope to get the price.

15 As you begin the auction and prices
16 get lower in the descending aspect of the auction,
17 suppliers will start to shed some of those premiums
18 they wanted to get in order to sell their product.

19 At some point, the margin gets reduced
20 to the bare minimum.

21 Q. You testified in response to some questions
22 from Mr. Townsend about head room.

1 Do you remember that testimony?

2 A. (BY MR. BOHORQUEZ): I recall the word head
3 room, yes.

4 Q. And isn't it to the RESs benefit to have
5 greater head room rather than less head room between
6 its price and the default price?

7 A. (BY MR. BOHORQUEZ): The greater head room
8 allows us to be upfront with the customer. What
9 happens is our competitors squeeze the head room to
10 the bare minimum.

11 Q. But it's better for a RES to have greater
12 head room than less head room, isn't that right?

13 A. (BY MR. BOHORQUEZ): As I said, having head
14 room allows companies like our company to be in
15 business and offers our customers savings and in some
16 cases better products; differentiation from what a
17 utility is offering for instance.

18 MR. BERNET: Move to strike. That was a yes or
19 no question.

20 JUDGE WALLACE: All right. The last answer is
21 stricken.

22 Q. BY MR. BERNET: It's better for a RES, is

1 it not, to have greater head room between the auction
2 clearing price than lesser head room?

3 A. Yes.

4 MR. BERNET: Nothing further.

5 JUDGE WALLACE: Thank you, gentlemen. You may
6 step down.

7 JUDGE JONES: Thank you.

8 (Witness excused.)

9 JUDGE WALLACE: Let's go off the record.

10 (Whereupon an off-the-record
11 discussion transpired at this
12 time.)

13 JUDGE WALLACE: Let's go back on the record.

14 You can go ahead and argue the motion
15 now.

16 MR. ROSEN: I would rather you get through the
17 witness first to lay the foundation for it for only
18 this reason. The document that was attached to that
19 particular motion simply updates the information in
20 the existing exhibit, and I think it would be better
21 to have the witness explain what the existing exhibit
22 is and then how he proposed the exhibit impacts that

1 existing exhibit.

2 If you let it in, you let it in. If
3 not, we use it through an offer of proof. I think it
4 would be better done through a witness though.

5 JUDGE WALLACE: Okay. Then we'll do it that
6 way.

7 Off the record.

8 (Whereupon an off-the-record
9 discussion transpired at this
10 time.)

11 JUDGE WALLACE: We'll recess for lunch and be
12 back in an hour.

13 (Whereupon the lunch recess was
14 taken from 12:40 p.m. to 1:40
15 p.m.)

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1 AFTERNOON SESSION

2 (Whereupon the
3 proceedings
4 were hereinafter
5 stenographically
6 reported by Carla
7 Boehl.)

8 JUDGE WALLACE: Let's go back on the record and
9 start our afternoon session. Mr. Rosen?

10 MR. ROSEN: Our next witness will be
11 Mr. Steinhurst.

12 JUDGE WALLACE: If you could pull a mic over to
13 you.

14 MR. ROSEN: And Mr. Steinhurst is being called
15 in both cases.

16 WILLIAM STEINHURST
17 called as a Witness on behalf of Citizens Utility
18 Board, having been first duly sworn, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ROSEN:

22 Q. Mr. Steinhurst, could you tell us your full

1 name, please.

2 A. William Steinhurst.

3 Q. And with whom do you work?

4 A. I work with Synapse Energy Economics.

5 Q. Where are they located?

6 A. The main office is at 22 Pearl Street in
7 Cambridge, Massachusetts. My business address is 45
8 State Street, Montpelier, Vermont 05602.

9 Q. In front of you you have what is marked as
10 CUB-CCSAO Exhibit 2.0 which is the direct testimony
11 filed in the Commonwealth Edison procurement case
12 with an e-Docket date of June 8, 2005. Can you tell
13 us what CUB Exhibit 2.1 is?

14 JUDGE WALLACE: I am sorry, what was the number
15 again?

16 MR. ROSEN: CUB-CCSAO Exhibit 2.1.

17 A. Since I don't have a copy in front of me, I
18 believe that's the resume' I filed as an exhibit to
19 my direct testimony.

20 Q. Do you have CUB Exhibit 2.2 in front of
21 you?

22 A. Is that the valuation of Exelon Illinois'

1 nuclear plant margins?

2 Q. Yes.

3 A. Yes, I have that in front of me.

4 Q. And how about CUB Exhibit 2.3?

5 A. I have that. It's a chart showing an
6 alternative allocation of contract traunche products
7 in a hypothetical auction, an alternative to the
8 auction allocation proposed by Commonwealth Edison
9 Company.

10 Q. And those exhibits were filed with e-Docket
11 on June 8, 2005. Do you have CUB Exhibit 4.0 in
12 front of you?

13 A. Yes, I do.

14 Q. And what is that?

15 A. That is my rebuttal prefiled testimony in
16 the proceeding 05-0159.

17 MR. ROSEN: Your Honor, I move for the
18 admission of CUB Exhibits 2.0 and Exhibits 2.1
19 through 2.3 and CUB Exhibit 4.0 into evidence.

20 JUDGE WALLACE: I seem to have misplaced 2.2.
21 What was that again?

22 WITNESS STEINHURST: Which number, please?

1 JUDGE WALLACE: 2.2.

2 WITNESS STEINHURST: 2.2 is a report entitled
3 "Valuation of Exelon Illinois' Nuclear Plant Margins"
4 dated June 8, 2005.

5 JUDGE WALLACE: Thank you. Are there any
6 objections?

7 MR. RIPPIE: We have not done any changes?

8 MR. ROSEN: No.

9 MR. RIPPIE: No.

10 JUDGE WALLACE: Hearing no objection, CUB-CCSAO
11 Exhibits 2.0, 2.1, 2.2, 2.3 and 4.0 are admitted.

12 (Whereupon CUB-CCSAO
13 Exhibits 2.0, 2.1, 2.2,
14 2.3 and 4.0 were
15 admitted into evidence
16 in Docket 05-0159.)

17 BY MR. ROSEN:

18 Q. By the way as a foundation, if I asked you
19 the same questions contained in those exhibits, would
20 you provide the same answers that are contained in
21 those exhibits?

22 A. With regard to the prefiled testimony

1 exhibits, yes.

2 Q. Now, I am going to turn to the Ameren
3 docket and your name is the same, obviously. Could
4 you turn to -- and you are working for the same
5 people in that docket, isn't that correct?

6 A. Both of those statements are correct.

7 Q. All right. Turn to CUB Exhibit 2.0 which
8 was filed with the e-Docket on June 15, 2005, and can
9 you tell us what CUB Exhibit 2.0 is?

10 A. That is my prefiled direct testimony in
11 Dockets 05-0160 through 0162.

12 Q. And what is 2.1? Is that your curriculum
13 vitae again?

14 A. Yes, it is.

15 Q. And what is CUB Exhibit 2.2?

16 A. I am sorry. I don't have that with me. If
17 I could get ahold of your copy, I could identify it.

18 Q. Why don't you come over to my computer
19 here.

20 JUDGE WALLACE: That's a switch.

21 MR. ROSEN: Yes.

22 Q. And speaking in the mic, your mic, my mic,

1 could you tell Your Honors what 2.2 is?

2 A. Yes, Exhibit 2.2 in the Ameren dockets is
3 the same document as Exhibit 2.2 attached to my
4 direct prefiled testimony in the ComEd docket.

5 Q. And let's turn to CUB Exhibit 4.0. Can you
6 tell Your Honors what that is?

7 A. That is my prefiled rebuttal testimony in
8 the Ameren dockets.

9 Q. And that was filed with e-Docket on August
10 10, 2005. If I ask you the same questions contained
11 in CUB Exhibit 2.0 which is your direct testimony and
12 4.0 which is your rebuttal testimony, would you give
13 the same answers that are set forth in those
14 documents?

15 A. Yes.

16 Q. And were CUB Exhibits 2.1 and 2.2 prepared
17 either by you or under your supervision or control?

18 A. Yes.

19 MR. ROSEN: I move for the admission in the
20 Ameren docket of CUB Exhibits 2.0, 2.1, 2.2 and 4.0.

21 JUDGE JONES: Thank you. Any objections to
22 those?

1 MR. FLYNN: Judge, the Ameren companies object
2 to the admission of CUB Exhibit 2.2 in the Ameren
3 record or the Ameren dockets. This is the document
4 that the witness has just identified as the study of
5 the valuation of Exelon Illinois' nuclear plant
6 margins that was performed for the ComEd docket.
7 There is no foundation for the admission of this
8 document into the record in the Ameren proceeding or
9 any establishment of the relevance of the document.
10 It doesn't involve the Ameren companies in any way.
11 It is a study apparently, taking the witness at his
12 word, of a type of plant that is not owned by any of
13 the Ameren companies or by their generation
14 affiliate. Accordingly, it has no relevance to the
15 issues that we are litigating in the Ameren
16 proceeding and does not belong in the record.

17 MR. ROSEN: Your Honor, can I ask the witness a
18 follow-up question? This may or may not be an issue.

19 MR. FLYNN: I would object to any additional
20 direct testimony at this point. We have had multiple
21 rounds of testimony in which witnesses were free and
22 available to provide testimony that would tie

1 particular documents or information to this record,
2 and it is not appropriate to elicit additional direct
3 testimony at this time when we have no opportunity to
4 explore its foundations or to respond to it.

5 MR. ROSEN: Your Honor, my question is if the
6 witness concedes it has no relevancy in the Ameren
7 matter, then we will withdraw it as an exhibit.
8 That's all. If he believes that it is relevant for
9 his testimony in the Ameren matters, then we are
10 going to stand by our request that it be admitted
11 into evidence.

12 Is it important to your testimony in the
13 Ameren matter?

14 JUDGE JONES: Just a minute before you answer,
15 Mr. Steinhurst. Is that acceptable to you if that
16 question is posed, given your objection on the table?

17 MR. FLYNN: Well, if the answer is short.

18 MR. ROSEN: It will be.

19 JUDGE JONES: Go ahead. You may answer the
20 question.

21 WITNESS STEINHURST: Yes, I believe that CUB
22 Exhibit 2.2 filed in the Ameren docket is relevant to

1 my direct testimony.

2 MR. ROSEN: We stand by our request that it be
3 admitted into evidence, Your Honor. His objection
4 may go to the weight of the evidence, but it
5 certainly is relevant to the extent that it supports
6 the opinions that he has expressed in the Ameren
7 matter as well, Your Honor.

8 JUDGE JONES: The witness has just concluded
9 that it is relevant, but the relevance has been
10 challenged. So how is it relevant?

11 MR. ROSEN: Because he uses the materials set
12 out in that particular document in formulating the
13 opinions that he has had on the Ameren matter. So it
14 serves as a basis for his opinions, Your Honor, and
15 it is admissible for that reason.

16 JUDGE JONES: Are you able to cite some
17 testimony from his direct that supports your
18 statement?

19 MR. ROSEN: I could go through it. It is going
20 to take awhile because this is the first time I have
21 heard an objection to a document. But certainly I
22 can do it. It is just not something that I can do in

1 a second. Maybe the witness can do it quicker than I
2 can, but I am certainly willing to go through it.

3 JUDGE JONES: Well, if you can cite some
4 testimony from his prefiling that you believe
5 supports your conclusion that it is relevant, then we
6 will take a look at that.

7 MR. ROSEN: May I have a moment?

8 JUDGE JONES: You may.

9 (Pause.)

10 MR. FLYNN: Judge, if you wish we can take this
11 question up at the conclusion of the witness's
12 appearance here on the stand. It will not affect my
13 cross examination today.

14 JUDGE JONES: Well, short of holding off on
15 this particular ruling, particularly given the fact
16 that counsel is still looking through the testimony
17 there for support for the claim that it is relevant,
18 we will proceed with the cross examination of the
19 witness. To the extent the relevancy objection still
20 pertains at the conclusion of that, we will deal with
21 that issue. It does not appear that proceeding with
22 the examination of the witness at this time is going

1 to cause problems in terms of whether or not the
2 witness is crossed on this. Mr. Flynn has indicated
3 that it will not affect cross.

4 BY MR. ROSEN:

5 Q. Now, let's turn for a moment to what is
6 attached on CUB's motion for leave to file an
7 additional exhibit which has been identified or
8 pre-identified as CUB Exhibit 2.2A. Are you familiar
9 with this particular document?

10 JUDGE JONES: If I could interrupt you just a
11 minute, pardon me for doing so. As far as the
12 exhibits in 05-0160, etc., that have not been
13 objected to, are you offering those?

14 MR. ROSEN: Yes, I am.

15 JUDGE JONES: And those are being offered at
16 this time, is that correct?

17 MR. ROSEN: Yes, Your Honor.

18 MR. FLYNN: And then before counsel proceeds,
19 Judge, could you ask which proceeding he is, for lack
20 of a better word, proceeding in now?

21 MR. ROSEN: Both.

22 JUDGE JONES: Well, I think right now the offer

1 that's on the table is the series of exhibits offered
2 in 05-0160. The prefiled ones have already been
3 admitted in the ComEd docket. So I believe that the
4 Ameren exhibits were offered, but there was an
5 objection to one of those. We will take the
6 objection under advisement for the time being. But
7 in the meantime I see no reason to hold off on ruling
8 on the other exhibits. Let me make sure that there
9 are no objections to them first.

10 Are there any objections to any of Dr.
11 Steinhurst's prefiled exhibits in the Ameren dockets
12 other than 2.2? There are not. So the following
13 exhibits offered in 05-0160 through -0162 are
14 admitted into the evidentiary record as offered.
15 That would include CUB Exhibit 2.0, direct testimony
16 filed on e-Docket on June 15, 2005, CUB Exhibit 2.1,
17 Dr. Steinhurst's CV filed June 15, 2005. We will
18 hold off on 2.2. Finally, CUB Exhibit 4.0, rebuttal
19 testimony filed August 10, 2005, is admitted. All
20 those are admitted as they appear on e-Docket and
21 they are admitted in the Ameren consolidated
22 proceedings. So that concludes that piece.

1 (Whereupon CUB Exhibits
2 2.0, 2.1 and 4.0 were
3 admitted into evidence
4 in Dockets
5 05-0160,-0161 and
6 -0162.)

7 MR. RIPPPIE: Your Honor, before the witness is
8 questioned about this exhibit, I would ask that we
9 entertain the argument on the motion.

10 JUDGE WALLACE: Mr. Rosen said right before we
11 broke for lunch that he did want to lay a little bit
12 of a foundation, if that's okay.

13 MR. RIPPPIE: I misunderstood.

14 MR. FLYNN: I apologize for my question to
15 Judge Jones. I guess I was anticipating where
16 Mr. Rosen was going now. With respect to that
17 foundation he indicated before lunch that he would
18 lay, it is my understanding that the CUB motion was
19 only filed in Docket 05-0159 which is why I posed the
20 question that I did as to what proceeding Mr. Rosen
21 is going to pursue Exhibit 2.2A in because I don't
22 believe we have been served with any motion in the

1 Ameren docket.

2 MR. ROSEN: I would have to concede that I
3 think Chris may be right about that. I just took a
4 look at the docket number and apparently Exhibit 2.2A
5 is only being offered in connection with the ComEd
6 case, so.

7 JUDGE WALLACE: All right.

8 BY MR. ROSEN:

9 Q. Just briefly, Mr. Steinhurst, can you
10 just -- 2.0 has already been admitted in the ComEd
11 case. Could you tell us what CUB Exhibit 2.0 is,
12 excuse me, 2.2? I misspoke.

13 A. CUB Exhibit 2.2 is a study of the margins
14 to be estimated or expected from operation at Exelon
15 nuclear plants that was conducted based on
16 projections of market rates using data available in,
17 I believe it was, April of this year.

18 Q. And that data was the future prices that
19 existed as of April?

20 A. Among other things.

21 Q. And the updated exhibit, that is based on
22 future prices as well?

1 A. It is, but it is based on future prices
2 available as of August of this year.

3 Q. And so 2.2A which is attached to the motion
4 simply is an update of the information based on more
5 current data, is that a fair statement?

6 A. Yes.

7 MR. ROSEN: Well, we are simply offering 2.2A,
8 Your Honor, as an update on a prior exhibit and it
9 uses futures prices as of August, rather than having
10 used future prices as of April. So it is just a more
11 current update of an existing exhibit and that's why
12 we are filing or asking that it be filed at this
13 point in time.

14 JUDGE WALLACE: All right. Mr. Rippie, do you
15 have any objections?

16 MR. RIPPIE: Yes, Your Honor, I do. There are
17 essentially three objections and I will be very
18 brief. First, it is contrary to procedure in the
19 case. Any party could all of us update their
20 testimony. Any ComEd witnesses could have updated
21 their testimony with new data. There has to be an
22 end and Your Honor set a schedule for the filing of

1 testimony in the case and this is after that time
2 testimony is closed.

3 Secondly, it is an unreasonable request in view
4 of the facts. This document was provided 16 hours
5 before the witness went on and 19 minutes before the
6 last business day where it is being offered. That is
7 compounded by the fact that CUB apparently had the
8 document September 1, six days ago. We weren't given
9 it at that time even though we have a data request
10 outstanding for work papers.

11 Thirdly, it is prejudicial for us. We can't
12 conduct discovery on it. But, more importantly, our
13 surrebuttal witnesses have no opportunity to respond
14 to it

15 JUDGE WALLACE: All right.

16 MR. ROSEN: Do you want to hear from me?

17 JUDGE WALLACE: Yes, please.

18 MR. ROSEN: As to the updating of information,
19 every witness on the stand so far -- not every
20 witness but most of the witnesses have updated their
21 testimony based on current information. So we are
22 not doing anything different than anyone else has

1 done. And the problem is that the information was
2 more recent. We obviously believe it is relevant
3 because it is based on more recent information. It
4 doesn't essentially change the impact of the original
5 exhibit. It just uses more current information, and
6 the gist of the exhibit is still the same. And so to
7 the extent that any testimony or any cross
8 examination is prepared based on the prior
9 examination, it is certainly going to be useful for
10 the purposes of this examination based on had
11 information. So there is really no prejudice here.

12 And the information has been readily available
13 and is something they could have looked at in any
14 event since it is based on future prices which are on
15 a publicly traded index. So it is transparent

16 JUDGE WALLACE: Okay. Are you going to offer
17 this in the Ameren docket at some future point or
18 just the ComEd docket?

19 MR. ROSEN: You know, I don't know. I know
20 that's not typical but I didn't prepare the motion.
21 I was surprised to see only the docket number on this
22 particular case. I don't know whether that was

1 inadvertence on the part of my office or not. But if
2 it turns out it is relevant, yes, I would like to
3 have it introduced into both. Since there is 2.2
4 that is being offered in the Ameren case which is
5 objected to, if that comes in, 2.2A obviously updates
6 that particular exhibit as well.

7 By the way, while we are sitting here I was
8 asked a question about whether 2.2 that we proposed
9 to be admitted in the Ameren matter was ever referred
10 to in his testimony in the Ameren matter, and I have
11 been provided a citation that shows that on CUB
12 Exhibit 2.0, lines 351 and 361, in the footnote the
13 2.2 had been referred to. So, yes. And in the
14 Ameren testimony there is reference to the particular
15 exhibit that has been premarked as 2.2 in the Ameren
16 matter

17 JUDGE WALLACE: All right. In regards to your
18 current motion on 2.2A, it is contrary to our
19 process. The process we have set out gives the
20 utility the surrebuttal stage. And while there has
21 been potential updating, it is usually done during
22 the round of testimony. However, I am going to defer

1 ruling at this point on 2.2A so if the motion comes
2 in, if the motion comes in to Ameren, Judge Jones and
3 I can confer.

4 Okay. Anything further?

5 MR. ROSEN: Just to talk outloud, I think we
6 have admitted all the exhibits in the Ameren matter
7 except for 2.0.

8 JUDGE WALLACE: Except for 2.2.

9 MR. ROSEN: 2.2, I'm sorry, and then we have
10 2.2A here and all the exhibits have been admitted
11 into evidence at this stage. So we tender the
12 witness for cross examination.

13 JUDGE WALLACE: Thank you. Anyone have cross
14 of Dr. Steinhurst?

15 MR. STAHL: Judge Wallace, I had originally
16 signed up for 15 minutes of cross. I know I said
17 earlier today that I did not have any cross for Dr.
18 Steinhurst. And I may have used some of my time
19 anyway with Mr. Fagan, but I do have or at least ask
20 for the opportunity to ask maybe four questions of
21 Dr. Steinhurst.

22 MR. FLYNN: I have offered to auction off part

1 of my time.

2 JUDGE WALLACE: Is Dr. LaCasse here to help
3 you?

4 That's fine. Come on up to the mic.

5 CROSS EXAMINATION

6 BY MR. STAHL:

7 Q. Good afternoon, Dr. Steinhurst. My name is
8 David Stahl. I am one of the attorneys representing
9 Midwest Generation. Are you familiar with Midwest
10 Generation?

11 A. In general.

12 Q. Do you know what they do?

13 A. They are a generation owner.

14 Q. Dr. Steinhurst, I would like to ask you
15 some questions about testimony on pages 14 of your
16 initial direct testimony. You have a question and
17 answer that appears between lines 321 and 331. Do
18 you have that nearby?

19 A. That's the direct testimony in the ComEd
20 case?

21 Q. Yes, it is, I apologize. I am referring to
22 the ComEd case, although my cross is in both cases.

1 A. I have that in front of me.

2 Q. Here you express your opinion that the
3 Commission should be concerned about potential flaws
4 in the wholesale electricity market, and at the very
5 end of that answer you say that the ability to
6 exercise market power would translate into
7 unnecessarily high bids from participants in ComEd's
8 proposed auctions. Do you see that?

9 A. I do.

10 Q. Those high bids to which you refer in that
11 answer, those would reflect, would they not, the
12 expectations of various suppliers that in the period
13 to be covered by the contracts market power might
14 exist?

15 A. That's one possibility.

16 Q. And would those high bids also reflect the
17 expectation that that market power not only might
18 exist but would be exercised in certain hours of
19 those years?

20 A. Again, that is one possibility.

21 Q. And the exercise would take the form of
22 withholdings, is that correct?

1 A. Same answer.

2 Q. That's a possibility?

3 A. Yes.

4 Q. Wouldn't you agree, Dr. Steinhurst, that
5 the bids will be higher only where the suppliers have
6 identical expectations that market power will exist,
7 who will have the market power, and when and whether
8 and how it will in fact be exercised?

9 A. No.

10 Q. Isn't it true, Dr. Steinhurst, that those
11 suppliers who do not share the expectations about the
12 existence of market power and whether it is likely to
13 be exercised in the future will tend to bid more
14 aggressively in the auction and bid the price down?

15 A. Some might but that would not necessarily
16 drive down the clearing price.

17 Q. Lower bids as a general proposition would
18 tend to drive down the clearing price, would they
19 not?

20 A. In many circumstances. But the
21 hypothetical you raised was that there is a range of
22 expectations that differ. And if the bidders differ

1 in their expectations, the fact that that spread
2 exists may or may not alter the final clearing price.

3 Q. Wouldn't you expect there to be a range of
4 expectations among the numerous suppliers who you
5 think may participate in this auction?

6 A. Yes.

7 MR. STAHL: Thank you. I have nothing further.

8 JUDGE WALLACE: All right. Thank you.

9 Mr. Fosco?

10 MR. FOSCO: Your Honor, Staff has actually just
11 a limited area but I think, based upon an agreement
12 with the counsel for the witness, we are going to
13 admit, so long as there is no objection, a response
14 to a data request as a Staff cross exhibit. I
15 believe are we at Staff Cross Exhibit 1? I have not
16 introduced any and I am not aware of us having done
17 that before.

18 JUDGE WALLACE: Yes, it looks like Staff Cross
19 Exhibit 1.

20 MR. FOSCO: Your Honor, may I submit copies to
21 you?

22 JUDGE JONES: Is this just for ComEd or both?

1 MR. FOSCO: This would be for both dockets,
2 Your Honor. Do I need three copies?

3 JUDGE JONES: Provide two and then we will mark
4 one in each docket.

5 (Whereupon ICC Staff
6 Cross Exhibit 1 was
7 marked for purposes of
8 identification as of
9 this date in Docket
10 05-0159 and 05-0160,
11 -0161, -0162.)

12 MR. FOSCO: Your Honors, I have submitted to
13 the court reporter and copied all the parties what
14 has been marked as Staff Cross Exhibit 1 which is a
15 CUB data request response to Staff data request
16 EDIV-CUB 1.06. I have spoken with counsel for CUB
17 and they have no objection, and we would move to
18 admit this into the record in lieu of conducting
19 cross examination, if there is no other objection.

20 JUDGE WALLACE: Any objection in -0159?

21 MR. RIPPIE: No.

22 JUDGE JONES: Are there any objections in

1 05-0160 through -0162? There are not.

2 MR. FOSCO: With that, Your Honor, Staff has
3 nothing further.

4 JUDGE WALLACE: Staff Cross Exhibit Number 1 is
5 admitted.

6 (Whereupon ICC Staff
7 Cross Exhibit 1 was
8 admitted into evidence
9 in Docket 05-0159 and
10 05-0160, -0161, -0162.)

11 JUDGE JONES: And just so the record is clear,
12 that exhibit is admitted in both dockets. It will be
13 known as Staff Cross Exhibit Number 1 in each docket.

14 MR. FOSCO: Thank you, Your Honors.

15 JUDGE WALLACE: Mr. Townsend, did you have
16 cross of Dr. Steinhurst?

17 MR. TOWNSEND: No, we don't, Your Honor, thank
18 you.

19 JUDGE WALLACE: Mr. Flynn?

20 MR. FLYNN: Sure, I will go.

21 CROSS EXAMINATION

22 BY MR. FLYNN:

1 Q. Good afternoon, Dr. Steinhurst.

2 A. Hello.

3 Q. My name is Christopher Flynn and I am going
4 to ask you some questions today on behalf of the
5 Ameren companies, so I intend to be in both
6 proceedings that we have going on here.

7 Now, you have explained to us in your testimony
8 and your attached CV that you were Director for
9 Regulated Utility Planning at the Vermont Department
10 of Public Service, is that right

11 A. Yes.

12 Q. Now, for the benefit of those of us in
13 Illinois, the Department of Public Service is
14 distinct from the Vermont Public Service Board, is
15 that correct?

16 A. Yes.

17 Q. The Vermont Public Service Board is a
18 decision-maker in contested cases, is that accurate?

19 A. Yes.

20 Q. The Department of Public Service, or let's
21 just call it the Department, does two things you
22 explained to us, is that right?

1 A. I am not sure what I have explained to you,
2 but that is a correct statement.

3 Q. Okay. Well, one of the things that you
4 explain to us is that it is an advocate of the public
5 interest that participates in proceedings before the
6 Public Service Board, is that right?

7 A. Yes.

8 Q. All right. Then the other important
9 function of the Department is that it develops state
10 energy policy, is that correct?

11 A. Yes, both under specific statutory mandates
12 and as the designated state energy office.

13 Q. Right. And one of those statutory mandates
14 is that a state comprehensive energy plan be
15 developed, is that right?

16 A. Yes.

17 Q. Now, you were at the Department for 22
18 years, is that correct?

19 A. Right.

20 Q. And for about 17 of those years, from 1986
21 until 2003, you were Director for Regulated Utility
22 Planning, is that right?

1 A. Yes.

2 Q. Now, how long has Vermont engaged in
3 statewide energy planning?

4 A. The first time I was involved in that
5 activity was 1989, I believe.

6 Q. Would you accept that the -- all right.
7 Since about 1989?

8 A. That's my recollection, right.

9 Q. So it is -- Vermont has been then engaged
10 in statewide planning for roughly 16 years, of which
11 you were in charge for 14 years, is that right?

12 A. For energy broadening, right.

13 Q. And in that regard -- well, you say on your
14 CV that you were responsible for preparation of
15 Vermont's long-range energy policy plans in the areas
16 of, among other things, electric utilities and
17 energy. I take it from that then the buck stopped
18 with you?

19 A. Not entirely.

20 Q. The legislature had some role, is that
21 right?

22 A. Not under Vermont law. I can explain if

1 you would like.

2 Q. Let me try. Then when I give up, I will
3 let you explain. You oversaw people who were doing
4 the research and the modeling and drafting the plans,
5 is that right?

6 A. Yes.

7 Q. You had, I would guess, then significant
8 input yourself, is that correct?

9 A. Yes.

10 Q. All right. Now, it is true that one of
11 your criticisms of the Ameren proposal is that it
12 fails to accommodate renewable sources of power, is
13 that right?

14 A. In general.

15 Q. Yes?

16 A. Yes.

17 Q. And were renewables something that you
18 endorsed in the Vermont long-range planning process?

19 A. Yes.

20 Q. All right. Another criticism you have of
21 the Ameren proposal is its failure to accommodate
22 demand side measures, is that right?

1 A. It's a very capsulated way of expressing
2 what I had to say about the issue of demand side
3 resources in the Ameren proposal. But taking that
4 phraseology, I would agree with the statement.

5 Q. Yeah, you will just have to accept that I
6 am moderately inarticulate and try to work with me.
7 Everyone will assure you that I am nowhere near the
8 smartest guy in the room.

9 ATTORNEY: Shall we stipulate to that?

10 MR. FLYNN: If I knew what the word meant, yes.

11 (Laughter)

12 BY MR. FLYNN:

13 Q. Is it fair to say, with apologies for the
14 capsulation, that demand side measures were something
15 that you endorsed in the Vermont long-range planning
16 process as well?

17 A. Yes.

18 Q. Now, you left the Department in 2003, is
19 that correct?

20 A. Yes.

21 Q. And at the time you left the Department,
22 Vermont's retail electric rates were over 40 percent

1 higher than the national average, is that correct?

2 A. I don't remember the precise number, but
3 they were well above the national average at the
4 time.

5 Q. And in fact you were forced out of your
6 position with the Department, isn't that right?

7 A. I was dismissed.

8 Q. All right. And you were replaced by
9 someone who had openly challenged both the efficiency
10 programs and renewable energy programs that had been
11 endorsed under your leadership, is that right?

12 A. That's correct.

13 Q. All right. And is it fair to say that
14 concern over the level of Vermont's retail electric
15 rates, despite 14 years of long-range planning, was a
16 principal reason for your dismissal?

17 A. That's not the reason I was given by my
18 commissioner at the time.

19 Q. So now you bring your expertise in planning
20 to Illinois and you offer some recommendations to
21 this commission, is that right?

22 A. Yes.

1 Q. And as I understand your testimony, you are
2 saying, one, reject this proposal and open a broader
3 procurement docket, is that right?

4 A. That's one alternative recommendation, yes.

5 Q. That's your primary alternative, isn't it?

6 A. Yes.

7 Q. And you say then, secondarily, if you don't
8 do that, you should require Ameren to use an actively
9 managed portfolio design, is that correct?

10 A. No.

11 Q. All right. In your rebuttal testimony --
12 before I have you turn to that, let me ask you this
13 way. You say that as an alternative Ameren should be
14 required to acquire power and recover its costs for
15 doing so pursuant to traditional ratemaking methods
16 including a prudence review, is that right?

17 A. Yes.

18 Q. And you offer some thoughts as to how
19 Ameren might acquire power under a traditional
20 ratemaking approach, is that right?

21 A. I cite various options that Ameren would
22 have for doing so.

1 Q. You don't propose a specific method but
2 contend that Ameren should actively manage its
3 portfolio in a way that minimizes costs, is that
4 right?

5 A. Yes.

6 Q. All right. And now you can turn to your
7 rebuttal testimony if it helps you.

8 A. Which testimony, please?

9 Q. The rebuttal in, I am sorry, in the Ameren
10 docket, that's 05-0160 and others -- it is CUB
11 Exhibit 4.0. And I would like to direct you to page
12 18 beginning at line 382 and why don't you just let
13 me know when you get there. Take your time.

14 A. I am there.

15 Q. All right. And here you list at the ten or
16 so lines beginning at line 382 specific steps that
17 Ameren could take to procure power in an actively
18 managed portfolio, is that right?

19 A. Almost. These are examples of products
20 that Ameren could choose to acquire -- steps for
21 acquiring these sources would include additional
22 alternatives for how to procure these or other

1 products.

2 Q. All right. Fair enough. In my question I
3 use the word "should." These are steps that Ameren
4 could take, is that right?

5 A. I am sorry. That's not the clarification I
6 was trying to make.

7 Q. That's the one I was trying to make,
8 though.

9 A. Well, I am still not quite in agreement.
10 The list shown on this page 18 is a list of various
11 products that Ameren might choose to acquire to meet
12 its needs. To me the word "steps" that Ameren might
13 follow adds an additional dimension of how Ameren
14 might go about procuring and disposing of and placing
15 these or other products as it chose to do so.

16 Q. I see. So Ameren could acquire, for
17 example, looking at line 382 standard wholesale
18 electric power market forward contracts of various
19 term lengths, etc., is that right?

20 A. Yes.

21 Q. And presumably it would go out and acquire
22 these in the market for these particular products, is

1 that right?

2 A. Various markets at various times.

3 Q. These are competitive markets?

4 A. That particular one is.

5 Q. All right. Well, let's look at line 385,
6 bilateral negotiated contracts of various terms,
7 sizes or start dates. What are you talking about
8 there?

9 A. These would be two-party agreements between
10 Ameren and sellers of power which might be generators
11 or they might be bidders that have previously
12 purchased power from generators. And those
13 agreements could call for delivery of a swift power,
14 acetylene power, fixed price power, variable priced
15 power, load fall power, things I mentioned somewhere
16 else. Capacity or ancillary services, contracts
17 could be for various quantities and various terms.

18 Q. All right. So Ameren would go into the
19 wholesale market and negotiate with other parties at
20 arms length, I guess, procure products like these and
21 then resell the power to their customers, right?

22 A. Yes.

1 Q. All right. And then you would agree that,
2 wouldn't you, that Ameren should recover their actual
3 prudent costs of acquiring these products that they
4 resell to their customer?

5 A. I agree that Ameren would be entitled to
6 normal -- to traditional ratemaking treatment for
7 those costs.

8 Q. Which you have described as including a
9 prudence review?

10 A. That is correct.

11 Q. All right. And in normal ratemaking a
12 utility would recover its actual costs subject to a
13 prudence standard, is that right, in your view?

14 A. There is more to it than that.

15 Q. Okay.

16 A. A prudence review would be one part of
17 that.

18 Q. All right. And would another part of that
19 be some sort of reasonableness test?

20 A. Well, the general standard is the rates
21 should, under traditional ratemaking, should be just
22 and reasonable. And that's usually interpreted to

1 require that costs to be recovered meet certain
2 criteria such as being legitimate, verifiable, used
3 and useful and prudent. And in addition traditional
4 ratemaking incorporates a variety of procedural
5 methods that vary from jurisdiction to jurisdiction
6 but have to do with when costs are brought in for
7 recovery and which costs can be accumulated prior to
8 rate cases and so on.

9 Q. All right. So with respect to the latter
10 part of your answer, the procedural requirements that
11 have to be satisfied, you are essentially talking
12 about what costs under this Commission's rules could
13 be properly reflected in a test year used to
14 establish rates, is that right?

15 A. Yes.

16 Q. All right. By the way, your counsel
17 mentioned that, you know, you might request a break
18 at some point. If you are uncomfortable at any
19 point, please do so.

20 A. Thank you.

21 Q. I don't have the authority to grant you
22 one, but I am sure the bench will accommodate.

1 With respect to the other part of that answer,
2 you don't suggest that based on your many years
3 working with regulated utilities that the Commission,
4 this Commission as a state entity, has the power to
5 determine reasonable wholesale rates, do you

6 A. In general state commission do not have
7 that power. I haven't made a specific examination
8 here in Illinois. I am not making that claim.

9 MR. FLYNN: Thank you. Those are all the
10 questions I have for Dr. Steinhurst. Thank you very
11 much.

12 JUDGE WALLACE: Do you need a break?

13 WITNESS STEINHURST: No, I do not. Thank you.

14 JUDGE WALLACE: Mr. Rippie?

15 MR. RIPPIE: Thank you.

16 CROSS EXAMINATION

17 BY MR. RIPPIE:

18 Q. Good afternoon, Dr. Steinhurst. My name is
19 Glenn Rippie and I am one of the attorneys for
20 Commonwealth Edison Company, and I have got sadly
21 more cross examination than Mr. Flynn had so I want
22 to echo his statement about requesting a break.

1 A. Thank you. I appreciate that.

2 Q. Let me begin by trying to understand
3 exactly what it is that you are asking the Commission
4 to do in this docket. As I understand it, your
5 principal recommendation for Commonwealth Edison
6 mirrors the recommendation you made with respect to
7 Ameren that you explained to Mr. Flynn a few minutes
8 ago, is that correct?

9 A. Yes.

10 Q. So your recommendation is, first, that the
11 ICC reject this filing, is that correct?

12 A. Yes.

13 Q. And then that it open another proceeding?

14 A. Yes. I do so recommend in my testimony,
15 but if I were to sequence my recommendations --

16 Q. I am not going in any particular sequence.
17 I am just trying to find out what they are first.

18 A. I made both of those recommendations.

19 Q. And then in your view that proceeding
20 should require Commonwealth Edison to actively manage
21 its own resource portfolio such that it meets a test
22 that you describe as getting the lowest cost, is that

1 fair?

2 A. I don't think that's quite right.

3 Q. Okay. Fix it for me, please.

4 A. My primary recommendation is that this
5 Commission should reject the present filing and make
6 it clear that Commonwealth Edison and Ameren each
7 have a responsibility to procure power to provide
8 default service under traditional ratemaking. The
9 recommendation with regard to a termine docket is
10 also present in my testimony and could be a way to
11 explore other alternatives. But the primary
12 recommendation is to reject the current filing, leave
13 the responsibility with the utility under traditional
14 ratemaking.

15 Q. Do you firmly recommend today that the ICC
16 require ComEd to engage in active portfolio
17 management under a regulated plan process?

18 A. Not exactly. I tried to explain in my
19 testimony why that would be a better approach than
20 the company's proposal. But my primary
21 recommendation is to leave the responsibility for the
22 decisions about how to procure default service power

1 with respective utilities.

2 Q. So would you agree with me that after
3 engaging in that process, it might be the case that
4 we end up with a competitive procurement mechanism,
5 true?

6 A. That is correct.

7 Q. Now, is there anything inherently unjust or
8 unreasonable about private companies selling
9 wholesale power at market rates?

10 A. Using those -- taking those words in their
11 general sense, no.

12 Q. Fair enough.

13 A. Taking them in the sense that's used in
14 utility regulation is a complicated decision process
15 at the federal level about whether market-based rate
16 authority is just and reasonable and that's
17 controversial.

18 Q. I am going to phrase questions very
19 carefully and I think if you listen to them very
20 carefully we might be through this a lot quicker.
21 What I asked was whether there was anything
22 inherently unjust and unreasonable about private

1 companies selling wholesale energy under market-based
2 rates. And is the answer to that question no?

3 A. The answer is that I am not sure what you
4 mean by just and reasonable.

5 Q. As -- well, you testified on cross
6 examination by Mr. Flynn about your understanding of
7 what the general just and reasonable standard was
8 applicable to utility ratemaking, do you recall that?

9 A. Yes.

10 Q. Same definition. Is there anything
11 inherently unjust and unreasonable about selling
12 power at wholesale at market-based rates?

13 A. The concept I explained to Mr. Flynn is not
14 directly relevant to wholesale sales.

15 Q. Well, let's try it this way. FERC has
16 issued a number of companies market-based rates,
17 right?

18 A. Yes.

19 Q. And in order for FERC to do that, it has to
20 find that those rates are just and reasonable, right?

21 A. Yes.

22 Q. And it is FERC's job to determine that

1 those rates continue to be just and reasonable as
2 long as they are in force, right?

3 A. That's my understanding.

4 Q. And would you also agree that those
5 particular rates are not within the jurisdiction of
6 this Commission?

7 A. That's also my understanding.

8 Q. Now, do you claim that there is anything
9 inherently unjust and unreasonable about ComEd buying
10 energy at wholesale?

11 A. No.

12 Q. In fact, ComEd has done that for years,
13 right?

14 A. Yes.

15 Q. So has most other utilities around the
16 country?

17 A. Correct.

18 Q. And is it also true that those purchases in
19 ComEd's case has been both from affiliated and
20 unaffiliated suppliers?

21 A. That's right.

22 Q. And would you agree that those purchases

1 were in each instance made pursuant to the seller's
2 wholesale rates on file with FERC?

3 A. Except for purchases that were made from
4 vendors none of who had market rate authority.

5 Q. Oh, okay. I thought you were going to say
6 except for PURPA. But even the vendors that were
7 selling under market rate authority made those sales
8 under market-based rate tariffs on file at FERC,
9 right?

10 A. I am not certain of the exact form in which
11 that's done, but it is my understanding that that's
12 essentially what's happened.

13 Q. Now, if ComEd were to use an active
14 portfolio management approach, a number of its
15 sources of supply might also be private wholesale
16 market purchases, right?

17 A. Yes.

18 Q. In fact, your testimony details a long list
19 of forms that those purchases could take?

20 A. Yes.

21 Q. Including one-year contracts, spot
22 contracts, three-year contracts, five-year contracts,

1 life of unit contracts, and other contingent long
2 term contracts, right?

3 A. Yes.

4 Q. And if ComEd used those tools prudently and
5 in fact used the power that they acquired to supply
6 their retail load, you wouldn't have any problems
7 with those costs being passed through to customers
8 under traditional ratemaking practices, right?

9 A. Not to the extent they were eligible to be
10 passed through under those traditional ratemaking
11 practices.

12 Q. Well, let me be clear. I am not trying to
13 be tricky. I am just trying to be clear. If ComEd
14 buys the power at wholesale -- you follow me so far?

15 A. Yes.

16 Q. And it is determined to be a prudent
17 purchase -- with me so far?

18 A. Yes.

19 Q. And the power that they purchase is in fact
20 used to supply the load of their retail customers,
21 shouldn't they be allowed to recover the costs under
22 traditional ratemaking practices?

1 A. So long as those costs meet the other
2 requirements of traditional ratemaking.

3 Q. Under Illinois law, whatever that may be?

4 A. Yes.

5 Q. The fact that they were purchased from the
6 market wouldn't make them ineligible for recovery,
7 would they?

8 A. Not per se.

9 Q. Well, provided they met those other
10 requirements, the fact that they were purchased from
11 the market wouldn't make them ineligible for
12 recovery, would they?

13 A. Not per se.

14 Q. Well, would you also agree that if ComEd
15 were to actively manage its own portfolio, it would
16 not automatically simply buy from ExGen?

17 A. I agree.

18 Q. It would evaluate what contracts are out
19 there and, your recommendation, try to pick the best
20 ones?

21 A. That would be one reasonable thing for the
22 company to do.

1 Q. Now, if it in fact did pick the best
2 ones -- I am struggling with your per se here. I am
3 going to give it one more try. If it in fact did
4 pick the best ones and those costs were found prudent
5 and used to supply customers, under traditional
6 ratemaking principles as you generally understand
7 them, those costs would be recoverable, correct?

8 A. Yes.

9 Q. And they would be recoverable from all the
10 different customer classes based on some rate design
11 that would attempt to reflect what the customer's
12 costs of service were?

13 A. Yes.

14 Q. Now, is it true that you also make some
15 recommendations, and particularly in your rebuttal
16 testimony but also in your direct, about how the
17 Commission ought to direct ComEd to run an auction or
18 an auction-like competitive procurement process if
19 such a process were selected by the Commission?

20 A. Yes.

21 Q. Now, nowhere in either of your testimonies
22 do you testify that an auction process is per se

1 imprudent, do you?

2 A. That's right.

3 Q. And nowhere in your testimony do you
4 indicate that a competitive procurement process in
5 general is per se imprudent, right?

6 A. Correct.

7 Q. And in fact is that why you testify in your
8 rebuttal at lines 690 to 692 that you were not
9 opposed in principle to auctions as part of a
10 procurement methodology and auction-based
11 procurements can have benefits?

12 A. What was the line number again?

13 Q. 690 through 692 in the rebuttal.

14 A. That is correct.

15 Q. Do those benefits include transparency?

16 A. An auction or competitive procurement can
17 include transparency as a benefit if done correctly.

18 Q. Do they include diversity in supply?

19 A. Not necessarily.

20 Q. An auction can be constructed in such a way
21 to provide beneficial diversity in supply, can it
22 not?

1 A. An auction for a specific single product
2 can readily be constructed to provide diversity of
3 supply with regard to vendors who are supplying that
4 particular product. It is more complicated and
5 problematical to construct an auction -- to construct
6 an auction that would provide diversity of supply
7 with regard to the product, the product or products
8 being procured.

9 Q. What benefits did you mean besides
10 transparency and diversity when you said that
11 auction-based procurement can have benefits?

12 A. Competition among vendors, with bidders.

13 Q. Which will tend to have the effect of
14 driving price down?

15 A. Yes.

16 Q. Any others?

17 A. Competitive procurement processes can
18 provide useful market intelligence to a utility. It
19 can stimulate demand for product -- it can stimulate
20 supply of products that the utility feels would be
21 useful but might not otherwise appear on their own.
22 It can in some situations with some products reduce

1 transaction costs. I don't have a complete list in
2 mind but that's a selection.

3 Q. Fair enough. If the Commission were to
4 determine that a competitive procurement or
5 auction-based procurement mechanism was prudent and
6 Commonwealth Edison employed that process to purchase
7 power that its retail customers used, should ComEd be
8 able to recover the resulting costs in its rates?

9 A. You haven't given me enough information
10 about the hypothetical to answer you.

11 Q. Let me try one more time. I will try to
12 remember your answers from the last time we tried
13 this. If ComEd uses an auction-based procurement
14 process which the Commission determines is just and
15 reasonable and prudent for it to do and it uses the
16 power that it acquires pursuant to that process to
17 serve its retail customers, you would agree, would
18 you not, that Commonwealth Edison should be able to
19 recover the resulting costs from its rates, in its
20 rates?

21 A. If ComEd chose to use a competitive
22 procurement process and the Commission on examination

1 found that the process had been run prudently and did
2 not result in any costs that were not entitled to
3 recovery under traditional ratemaking and the power
4 for which those costs were incurred were used by
5 Commonwealth Edison's customers, then I would agree
6 with you.

7 Q. And there is nothing special about any
8 particular customer group in that answer. If it was
9 used for large industrials, the answer would still be
10 true?

11 A. Well, there are certain situations present
12 in Illinois where some classes of service have been
13 declared competitive, and I am not sure how to answer
14 you with regard to those.

15 Q. I am only talking about the utility's
16 bundled service to those classes. It doesn't matter
17 what class it is as long as we are talking about the
18 power that is used to serve the bundled load, right?

19 A. Right. I agree that I did not intend in my
20 last answer to distinguish in any way between
21 customer classes.

22 Q. Now, it is not your testimony, is it, that

1 Commonwealth Edison's options are limited either to
2 an auction as proposed or to a purchase from ExGen,
3 right? There are other options.

4 A. That is correct.

5 Q. One set of other options would be other
6 types of arms length procurement processes, right,
7 besides auctions?

8 A. Yes, or a selection of several such
9 processes.

10 Q. And is the fact that there are other arms
11 length acquisition processes one reason why your
12 alternative -- and I am going to cite to lines 912
13 and 914 of your rebuttal -- quote, "leaves the
14 company free to use a multitude of competitive
15 procurement approaches"?

16 A. Yes.

17 Q. And in your view ComEd should actually
18 explore those alternative processes, right?

19 A. I believe so.

20 Q. And would you also agree that ComEd should
21 not be prohibited a priority from engaging in any
22 such arms length acquisition process which it turns

1 out is beneficial?

2 A. I don't believe ComEd should be prohibited
3 a priority from using any of those processes. I am
4 not sure what you meant by the last phrase in your
5 question.

6 Q. Well, look, if you would turn to your
7 rebuttal testimony at line 971, you indicate that
8 nothing in my recommendation would preclude the
9 judicious use of competitive procurement by ComEd in
10 meeting its default service obligations. I guess
11 that's what I was aiming at. You would not recommend
12 that anything preclude the judicious use of
13 competitive procurement by ComEd in meeting its
14 default service obligations, would you?

15 A. No.

16 Q. You do not testify that open markets or
17 competition are unreasonable or unjust in general, do
18 you?

19 A. No.

20 Q. And how do you define a market-based rate?

21 A. The context in which I am familiar with
22 that term is market-based rate authority as used in

1 FERC proceedings. And in that context it is my
2 understanding that means authority to sell power at
3 rates determined by competitive markets, rather than
4 at a cost-based rate approved by FERC.

5 Q. If a utility has a rate that recovers only
6 its just and reasonable and prudent costs in a
7 circumstance where those costs are established by the
8 markets for the inputs that the utility buys, would
9 you call the retail rate a market-based rate?

10 A. In no way. Well, I should clarify that.

11 Q. There is no question pending.

12 Now, in several locations in your testimony you
13 comment on divestiture. Would you agree with me that
14 so long as ComEd owns no generation, it must purchase
15 its supply

16 A. Or choose to engage in generation itself.

17 Q. Now, in the hypothetical where it does not
18 build, its actual cost of procurement will be
19 equivalent to what it pays its suppliers, right?

20 A. Plus transaction costs.

21 Q. Fair enough. If the auction were rejected,
22 ComEd as it exists today would still have to buy

1 electricity or, as you say, build generation, right?

2 A. Is that a question?

3 Q. Yes. Would ComEd still have to buy
4 electricity to serve its load?

5 A. Yes.

6 Q. And the fact that the projection -- sorry.
7 The fact that the auction was rejected would not
8 change in any way the rates that the suppliers have
9 that govern their sales to ComEd, would it?

10 A. I don't know what you mean by the rates
11 that suppliers have.

12 Q. These suppliers' FERC-filed rates wouldn't
13 change just because the Commission rejected the
14 auction?

15 A. That is true.

16 Q. Do you know what the -- I am not going to
17 ask you things Mr. Fagan already answered. Save some
18 time.

19 JUDGE WALLACE: That wasn't a question pending.

20 (Laughter)

21 Q. In your view -- let me ask you a couple
22 questions about what I think I understand to be your

1 description of traditional ratemaking. Do you have
2 an understanding of how rate cases work in Illinois
3 traditionally?

4 A. Did you ask about Illinois?

5 Q. Yes.

6 A. I don't have specific experience in
7 Illinois.

8 Q. If then you don't know the answer to these
9 next few questions that I ask you in Illinois, tell
10 me you don't know. Do you know whether in the
11 traditional rate case ComEd's cost might include
12 power purchase costs?

13 A. That is correct.

14 Q. Would you agree that it is not a
15 prerequisite for ComEd filing a rate case seeking an
16 increase in supply charges that a competitive market
17 has developed?

18 A. That's my understanding.

19 Q. Whether or not a competitive market is
20 developed, if Commonwealth Edison's costs have
21 increased, it is your understanding that the company
22 has a right to file a rate case, right?

1 A. I have not made a detailed study of
2 Illinois law on that, but that's my general
3 understanding.

4 Q. At least once the transition period is
5 over?

6 A. Exactly.

7 Q. And there is -- once the transition period
8 is over, there is nothing special about any
9 particular customer segment or whether or not the
10 customers have been declared competitive, right?

11 A. I don't understand the question.

12 Q. ComEd could file a rate case for its large
13 industrial customers, for its small industrial and
14 commercial customers and for its residential
15 customers once the transition period is over?

16 A. That's my understanding. But I don't have
17 any knowledge about how that is effected for classes
18 that have been declared competitive by the ICC.

19 Q. Fair enough. Now, if I can ask you to
20 briefly turn to lines 55 and 58 in your rebuttal.
21 You indicate that in your view, quote, The company
22 should not be absolved of its duty to procure the

1 best possible result for default service customers
2 (especially in light of the open issues on past
3 actions regarding divestiture), end of quote. Is it
4 your testimony -- first of all, did I read it
5 correctly?

6 A. Yes.

7 Q. Is it your testimony that the standard of
8 review that the Commission should give to
9 Commonwealth Edison's proposed procurement options is
10 whether or not they produce the best possible result
11 for all its customers?

12 A. No.

13 Q. Do you know when ComEd first began
14 considering the design of procurement post-2006?

15 A. No.

16 Q. Do you know what resources Commonwealth
17 Edison devoted to evaluating the alternatives before
18 it?

19 A. No.

20 Q. Do you know how many person hours ComEd
21 devoted to that process at all?

22 A. No.

1 Q. But you do know that the Illinois Commerce
2 Commission had a workshop process that discussed that
3 issue, yes?

4 A. Yes.

5 Q. Do you know when that started?

6 A. I believe it started in early 2004.

7 Q. And it included six working groups?

8 A. I think that's the number.

9 Q. Would you accept that the working groups
10 met a total of more than 50 times?

11 A. That sounds reasonable.

12 Q. Would you accept that there are more
13 than -- were more than one hundred participants in
14 that process?

15 A. That also sounds reasonable. I was at one
16 meeting where there may have been a hundred people.

17 Q. Just at that meeting?

18 A. Yes.

19 Q. Would you accept that there were a variety
20 of interim and final reports issued by those working
21 groups?

22 A. Yes.

1 Q. To your knowledge was any stakeholder
2 excluded from participating in that process?

3 A. No.

4 Q. CUB participated, did they not?

5 A. Yes.

6 Q. The Cook County State's Attorney's office
7 participated, is that correct?

8 A. Yes.

9 Q. And at the end of that process some reports
10 were generated that contained consensus items?

11 A. There were some reports generated that
12 contained items that were labeled consensus items.

13 Q. Fair enough. Would you agree that the
14 company's proposal is based on a model that has
15 worked reasonably well in other locations?

16 A. One other location.

17 Q. Will you acknowledge that the company's
18 proposal sought in some ways to improve upon that
19 model?

20 A. Yes, although some of the improvements,
21 some of the changes that were made in the guise of
22 improvements, in my opinion were implemented in a way

1 that turned out not to be improvements but actually
2 to make the process, the proposal, not as good as the
3 original.

4 Q. And those, though, are topics that you
5 bring up with particularity in your testimony?

6 A. That's right.

7 Q. Now, are you familiar with Dr. Laffer's
8 testimony in this case?

9 A. I have read it. I don't have it all in
10 mind.

11 Q. Do you understand that he proposes a
12 pay-as-bid auction, is that correct?

13 A. Yes.

14 Q. Are you familiar with the testimony offered
15 by various witnesses for the Coalition of Electric
16 Suppliers?

17 A. Again, I examined it. I don't recall at
18 the moment what they had to say.

19 Q. Can you identify any alternative offer by
20 any party in this docket, either with respect to
21 auction design or rate design, where Commonwealth
22 Edison has argued that it would be improper for the

1 Commission to consider that alternative?

2 A. I am not sure what you mean by improper. I
3 am aware that company witnesses have filed testimony
4 explaining why in their opinion there is alternatives
5 that are not good policy. I am not personally aware
6 of anyone who has testified or otherwise put forward
7 in this proceeding that those alternatives were
8 beyond the authority of the Commission to consider or
9 improper in some legal manner.

10 Q. Now, one of the proposals that you made is
11 that Commonwealth Edison consider and probably enter
12 into more long-term arrangements for its power
13 procurement. Do you recall that recommendation? I
14 am now getting towards the end of your rebuttal
15 testimony where you start talking about the
16 alternative signs.

17 A. I know that I discuss various long-term
18 arrangements that I thought would be improvements. I
19 would like to see that exact language.

20 Q. I am not going to go into details. It was
21 just an introductory question. What I actually want
22 you to think about is, would you agree that parties

1 selling power to ComEd under long-term arrangements
2 especially will be concerned about Commonwealth
3 Edison's credit worthiness?

4 A. Yes.

5 Q. And the reason for that is because they
6 want to get paid, right?

7 A. Certainly.

8 Q. And the risks to them of being paid get
9 greater the longer the term of the contract, all
10 other things being equal?

11 A. I think there is always some concern in
12 that regard. But the significance and materiality of
13 that concern would depend on the circumstances under
14 which the purchase had been made.

15 Q. It was really a pretty simple question.
16 All other things being equal, in a ten-year contract
17 suppliers are going to be much more concerned about
18 ComEd's long-term financial condition than they are
19 if they have a one-month contract, right?

20 A. I don't agree with your characterization
21 much more. That was my point, that materiality
22 depends on the circumstances.

1 Q. Well, in either case then, if you were a
2 seller, one of the principal things you would examine
3 in evaluating ComEd's credit worthiness is whether or
4 not ComEd can get the revenues from customers
5 necessary to pay for the power, right?

6 A. Yes.

7 Q. And if you knew or were concerned about
8 Commonwealth -- sorry. If you knew that Commonwealth
9 could not collect those costs in rates or were likely
10 to be unable to collect those costs in rates, that
11 would increase your concern about the company's
12 ability to pay you, would it not?

13 A. Hypothetically, yes.

14 Q. It would really increase your concern; it
15 is not just a hypothetical, right?

16 A. If you hypothetically had that belief, then
17 it would really increase your concern.

18 Q. Now, I am down to three pages here. Are
19 you okay?

20 A. I am fine, thank you.

21 Q. Is it your testimony that Commonwealth
22 Edison's prudence with respect to acquisition should

1 be judged by changes in prices or other conditions
2 not known and that ComEd could not have known at the
3 time the acquisition arrangements were made?

4 A. No, but I would like to explain my answer
5 briefly.

6 Q. Well, I tell you what, let me ask you a
7 couple more questions and maybe we will get the
8 explanation. If I could ask you to turn to your
9 rebuttal testimony at lines 175 to 178, and there you
10 testify that the prudence standard requires that the
11 utility's decisions and actions be evaluated in light
12 of the information that it had or should have had
13 during the pertinent time frame, is that a better
14 characterization of your position?

15 A. Yes.

16 Q. And you would agree, would you not, that
17 information that is available only through hindsight
18 is given no weight?

19 A. That's what I said.

20 Q. In evaluating that, am I correct that the
21 test is whether the utility's management actions were
22 reasonable public utility management decisions, not

1 whether they were the best possible decision?

2 A. Yes.

3 MR. RIPPIE: May I approach the witness
4 briefly, Your Honor?

5 JUDGE WALLACE: Yes.

6 JUDGE JONES: Mr. Rippie, were you wanting to
7 get that marked?

8 MR. RIPPIE: I don't know that yet. I won't
9 probably ask for it to be admitted, but I don't know
10 whether I will need it to be marked.

11 Q. Mr. Steinhurst, I have shown you a document
12 which purports to be a reprint from an electric
13 utility weekly published on March 7, 2005. Are you
14 aware that that is around the date on which this
15 proceeding was initiated?

16 A. Yes.

17 Q. This article quotes Martin Collins (sp)
18 saying, quote, We do not oppose the idea of an
19 auction as a competitive procurement mechanism. It
20 is probably the worst of all competitive mechanisms
21 except for all the others, unquote. Is that
22 statement consistent with advice that you and your

1 company gave to the Citizens Utility Board up to and
2 around the date of filing the case?

3 A. In part.

4 MR. RIPPIE: Thank very much. That's all I
5 have.

6 JUDGE WALLACE: Do you have any redirect?

7 MR. ROSEN: I do, Your Honor. I want to ask
8 whether the witness needs a break.

9 WITNESS STEINHURST: That would be good.

10 JUDGE WALLACE: Let's take a break, a
11 five-minute break.

12 (Whereupon the hearing
13 was in a short recess.)

14 JUDGE JONES: Back on the record. Mr. Rosen,
15 any redirect?

16 MR. ROSEN: Yes, there is.

17 REDIRECT EXAMINATION

18 BY MR. ROSEN:

19 Q. Mr. Steinhurst, could you explain why you
20 were asked to leave your position from that Vermont
21 state agency?

22 A. Yes. Since 1986 I had been serving in

1 what's called an exempt position which means that I
2 served at the pleasure of the commissioner. Prior to
3 that I had been in a civil service position. In
4 January of 2003, I guess it was, a new governor took
5 office and appointed a new commissioner for the
6 Department of Public Service. Between January of
7 that year and early June of that year I continued to
8 work in the position of Director for Regulated
9 Utility Planning at that agency and engaged in the
10 usual duties, litigation testimony, settlement
11 negotiations, planning activities and so on.

12 Early in June of that year internal discussions
13 about a particular piece of litigation were coming to
14 a decision point, and there were philosophical
15 differences within the Department about the
16 appropriate position to take in that proceeding. In
17 discussions with the commissioner I made it a point
18 to explain to him that I would present the
19 Department's settled position as best I could, but
20 that he should be aware that I had previously
21 testified on similar issues in a manner different
22 from the position he wanted me to take, and that the

1 Public Service Board in Vermont was aware of that and
2 that if I testified to the Department's position,
3 they were likely to ask me whether that Department
4 position was my own personal position, and that I
5 would have to tell the truth because I would be under
6 oath. One week later I was handed my notice

7 Q. In response to a question Mr. Rippie asked
8 you, you had answered a question about retail rates
9 and market-based rates and you wanted to clarify your
10 answer but wasn't able to at that time. Will you now
11 clarify your answer?

12 A. Yes. I was asked if a retail rate under
13 certain circumstances would be a market-based rate,
14 and I said that it would not be. What I meant was
15 that that retail rate would not be a market-based
16 rate because the term "market-based rate" is a term
17 of art in wholesale electric regulation and not
18 applicable on its own terms to a retail rate. I did
19 not mean anything more than that.

20 Q. Now, there was questions asked of you by
21 the lawyers representing Ameren and Commonwealth
22 Edison about alternative methods of procuring

1 electricity, including taking into consideration that
2 an auction might be used to procure electricity. Is
3 it fair to characterize your testimony as saying,
4 well, Commonwealth Edison and Ameren should procure
5 electricity any way they want subject to some
6 regulatory review after the fact. Is that a fair
7 characterization of your position to a certain
8 extent?

9 A. I wouldn't say any way they want. I would
10 say in accordance with their duty to provide
11 least-cost service.

12 Q. Could you explain why this is the basis of
13 your testimony?

14 A. Yes. My view of the proposal that's been
15 made by both companies is that they should be
16 authorized to conduct a predefined procurement
17 process at a single point in time each year for a
18 very limited set of products that would provide power
19 for default service customers of those utilities.
20 And be authorized to pass through those, the costs
21 that result from that procurement, with virtually no
22 overview except for some minor administrative costs

1 calculations. In my view that is not the best that
2 can be done for the consumers that lack retail
3 competitive alternatives.

4 Q. Why is that?

5 A. As I explained in my prefiled testimony,
6 that's a very narrow, very fragile style of
7 procurement and it does not utilize any active
8 application of professional utility judgment. And I
9 believe that it makes more sense for utilities to be
10 responsible for continuously insuring that they have
11 identified and are using the best procurement
12 practices and the best portfolio in its choices to
13 procure for serving those customers that do not have
14 competitive retail alternatives.

15 In one piece of surrebuttal that recommendation
16 has been analogized to Soviet-era style central
17 planning. If that's a valid analogy, then the trust
18 officer at every promotional bank, the manager of
19 procurement for every major industrial corporation
20 and every investor who makes decisions about how to
21 invest their funds or how to purchase their needs is
22 engaging in central planning. I find that a very

1 inappropriate comparison

2 MR. FLYNN: I would move to strike the last
3 part of the answer. The witness was not even
4 attempting to respond to anything that came up on
5 cross examination but raised a point in someone's
6 surrebuttal testimony that he felt then compelled to
7 comment on and offer his own surrebuttal.

8 JUDGE JONES: Have you got any response?

9 MR. ROSEN: The surrebuttal that he referred to
10 was completely directed to his testimony that he has
11 given in this case and he is responding to that which
12 involves why he has made the suggestions that he has
13 made and is also responsive to the questions asked of
14 him concerning his approach about the way ComEd
15 procures electricity and what review they would be
16 subject to after such procurement.

17 JUDGE JONES: Objection sustained. I think it
18 does appear to be primarily an effort to respond to
19 surrebuttal. So that's the ruling.

20 BY MR. ROSEN:

21 Q. Have you finished your answer?

22 A. I want to respect that ruling and be very

1 careful about what else I wanted to say here.

2 JUDGE JONES: Just for record clarity, I think
3 if you want to proceed with a different question.

4 Q. Yeah, why don't I? Why do you believe that
5 it is important that whatever Commonwealth Edison
6 does to procure electricity, that it be subject to
7 regulatory review in a traditional rate case by the
8 Illinois Commerce Commission?

9 A. That's really the only sure safeguard that
10 consumers who lack competitive retail alternatives
11 have to be confident on an ongoing basis that their
12 service is going to be a just and reasonable rate. I
13 don't believe that that decision can be made by
14 approving a particular process at one point in time
15 and just letting the chips fall where they may. The
16 protections developed for what are essentially
17 captive retail customers over the years in the
18 utility arena are balanced, fair, sound and
19 appropriate, and they should not be blown away for
20 such captive customers just because the utility is
21 more comfortable without the responsibility.

22 MR. ROSEN: Nothing further.

1 JUDGE WALLACE: Any recross?

2 MR. RIPPIE: I will try to be brief.

3 RECROSS EXAMINATION

4 BY MR. RIPPIE:

5 Q. Do you recall the question that Mr. Cohen
6 asked you about whether or not a given retail rate
7 was marked-based or not?

8 A. Yes.

9 MR. ROSEN: Mr. Rosen.

10 MR. RIPPIE: Did I say -- I am thinking Marty.
11 I am sorry, Larry.

12 MR. ROSEN: I should take that. Maybe I could
13 get a raise.

14 MR. RIPPIE: He is here in spirit. Let me try
15 that from the very beginning again.

16 Q. Do you recall Mr. Rosen's question, which
17 Mr. Cohen would have asked if he was here, about
18 whether or not a retail rate was a market-based rate?

19 A. Yes.

20 Q. Is it your testimony, given the fact that
21 market-based rates as you use the term is a term of
22 art, that no retail rate can be a market-based rate?

1 A. For a retail rate to be a market-based rate
2 you would have to adopt some other definition. If
3 you are in agreement on some other definition for
4 what it meant for a retail rate to be market-based,
5 then that would be possible.

6 Q. Just sticking with your definition for now,
7 the definition that you are referring to, would you
8 agree that it is not possible for a retail rate to be
9 a market-based rate?

10 A. I don't see how it is possible for a retail
11 rate to be a market-based rate as defined by FERC.

12 Q. But you would agree that that rate, that
13 hypothetical rate you were talking about in this
14 case, would be cost-based to the extent that it
15 reflected the utility's actual reasonable and prudent
16 costs of service?

17 A. In general, yes.

18 MR. RIPPIE: I think that's it. Thanks.

19 JUDGE JONES: Very quickly, the page from the
20 "Electric Utility Week," I realize it has not been
21 marked and is not intended to be offered into the
22 record. I am not going there. But since there were

1 questions on it, I just want to make sure that it is
2 clear what the witness was being asked to look at.
3 And it may be already clear in the record; I just
4 don't recall for sure. What was the publication date
5 of that item?

6 MR. RIPPPIE: I think I read it into the record.
7 But to be clear, Your Honor --

8 JUDGE JONES: The page number also?

9 MR. RIPPPIE: It is a one-page reprint but it
10 appeared on page 22 of the original electric utility
11 publication. It was dated the 7th of March, year
12 2005, "Electric Utility Week," and it appeared on
13 page 22 and the witness was tendered the one-page
14 reprint of the article.

15 JUDGE JONES: Thank you. The record may
16 already be clear on that. I just didn't recall and I
17 was wanting to make sure.

18 As far as Exhibit 2.2, I think we might be able
19 to dispose of that. Not 2.2A, that's a different
20 ballgame. But 2.2, so maybe we can get that out of
21 the way. First, let me see if there are any
22 additional arguments to be made with respect to 2.2,

1 at least first of all from Mr. Flynn or Mr. Rosen

2 MR. FLYNN: No.

3 MR. ROSEN: Well, you asked a question of me
4 whether CUB Exhibit 2.2 had been referred to in
5 Mr. Steinhurst's testimony in the Ameren case, and on
6 lines 353 through 361 of the direct testimony of
7 Mr. Steinhurst in the Ameren case he does refer to
8 CUB Exhibit 2.2.

9 JUDGE JONES: Anything further on that, Mr.
10 Flynn or anybody else? All right. I am going to go
11 ahead and make a ruling on that. The exhibit is
12 admitted. It is pretty border line in terms of
13 relevancy, I think, in the Ameren docket, given what
14 it is. But I think the objections really go more to
15 the weight to be given that exhibit. So that's the
16 ruling.

17 (Whereupon CUB Exhibit
18 2.2 was admitted into
19 evidence in Docket
20 05-0160, -0161, -0162.)

21 Having said that, this ruling does not reach
22 any of the issues that were raised with respect to

1 2.2A offered in the ComEd side. Those are different
2 concerns, different arguments, and this ruling does
3 not reach those and creates no presumptions with
4 respect to those

5 JUDGE WALLACE: Thank you, Dr. Steinhurst. You
6 may step down.

7 (Witness excused.)

8 JUDGE JONES: Mr. Lakshmanan, did you want to
9 go ahead and take care of your item. Do you believe
10 that to be a resolved matter?

11 MR. LAKSHMANAN: I believe that to be resolved.

12 JUDGE JONES: While we are getting geared up
13 for the next witness, why don't you indicate what we
14 need to hear on that one?

15 MR. LAKSHMANAN: It is my understanding,
16 subject to anybody else's objection, that there is no
17 cross for Dynegy witness Dornbusch and, therefore, if
18 that is acceptable to everybody, we would put that
19 testimony in via affidavit.

20 JUDGE JONES: Does anybody have any objection
21 to what Mr. Lakshmanan is proposing there? Let the
22 record show no response to that. So that will be

1 permitted.

2 MR. LAKSHMANAN: Thank you very much, Your
3 Honor.

4 JUDGE WALLACE: All right. Mr. Townsend?

5 MR. TOWNSEND: Thank you, Your Honor,
6 Christopher J. Townsend from the law firm DLA Piper
7 Rudnick Gray Cary US, LLP, for this portion of the
8 record appearing solely on behalf of Direct Energy
9 Services, LLC, and US Energy Savings Corp. for
10 purposes of this witness's direct and cross
11 examination. And at this time we would like to call
12 James Steffes and we would note that he has been
13 previously sworn.

14 JAMES STEFFES
15 called as a Witness on behalf of Direct Energy
16 Services, LLC, and US Energy Savings Corp., having
17 been previously duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TOWNSEND:

21 Q. Mr. Steffes, can you please state your name
22 and spell your last name.

1 A. James Steffes, S-T-E-F-F-E-S.

2 Q. And for the ComEd proceeding you have
3 before you a document that has been labeled DES-USESC
4 Exhibit 1.0 entitled the Direct Testimony of James
5 Steffes on behalf of Direct Energy Services, LLC, and
6 US Energy Savings Corp. which has attached to it two
7 documents, the first labeled DES-USESC Exhibit 1.1
8 and the second that is labeled DES-USESC Exhibit 1.2?

9 A. Yes.

10 Q. Do you also have before you a document
11 labeled DES-USESC Exhibit 2.0 Revised entitled the
12 Revised Rebuttal Testimony of James Steffes on behalf
13 of Direct Energy Services, LLC, and US Energy Savings
14 Corp. which has attached to it one document that was
15 labeled DES-USESC Exhibit 2.1?

16 A. Yes.

17 Q. Was that testimony prepared by you or under
18 your direction and control?

19 A. Yes.

20 Q. And do you intend for those exhibits to be
21 your prefiled testimony in the ComEd proceeding?

22 A. Yes.

1 MR. TOWNSEND: Your Honor, we would note that
2 the direct testimony was filed in e-Docket on June 8,
3 2005, so that was CES Exhibit 1.0, 1.1 and 1.2. CES
4 -- I am sorry, I said CES. I meant to say DES-USESC
5 Exhibits 1.0, 1.1 and 1.2 were all filed June 8,
6 2005. DES-USESC 2.0 Revised was filed via e-Docket
7 on August 19, 2005, and DES-USESC Exhibit 2.1 was
8 filed via e-Docket on August 3, 2005. And with that
9 I would move those exhibits into evidence in the
10 ComEd proceeding.

11 JUDGE WALLACE: Do you know how much the court
12 reporters hate those initials?

13 MR. TOWNSEND: I know.

14 JUDGE WALLACE: Are there any objections to
15 those exhibits just moved?

16 MR. RIPPKE: No objection.

17 JUDGE WALLACE: Hearing no objection DES-USESC
18 Exhibits 1.0, 1.1, 1.2, 2.0 Revised and 2.1 are
19 admitted.

20 (Whereupon DES-USESC
21 Exhibits 1.0, 1.1, 1.2,
22 2.0 Revised and 2.1

1 were admitted into
2 evidence in Docket
3 05-0159.)

4 MR. TOWNSEND: Thank you, Your Honor.

5 Q. Mr. Steffes, for the Ameren proceeding do
6 you have before you a document labeled DES-USESC
7 Exhibit 1.0 entitled Direct Testimony of James
8 Steffes on behalf of Direct Energy Services, LLC, and
9 US Energy Savings Corp. which has attached to it a
10 document labeled DES-USESC Exhibit 1.1?

11 A. Yes.

12 Q. Do you also have before you a document
13 labeled DES-USESC Exhibit 2.0 entitled Rebuttal
14 Testimony of James Steffes on behalf of Direct Energy
15 Services, LLC, and US Energy Savings Corp.?

16 A. Yes.

17 Q. Was this testimony prepared by you or under
18 your direction and control?

19 A. It was.

20 Q. Do you intend for those exhibits to be your
21 prefiled testimony in the Ameren proceeding?

22 A. Yes.

1 MR. TOWNSEND: Your Honor, we would note for
2 the record that Exhibit 1.0 was filed via e-Docket
3 June 15, 2005, as was Exhibit 1.1. Exhibit 2.0 was
4 filed via e-Docket on August 10, 2005. And with that
5 we would move those exhibits into evidence in the
6 Ameren proceeding.

7 JUDGE JONES: Any objection to that?

8 MR. FITZHENRY: No objection, Your Honor.

9 JUDGE JONES: Let the record show those
10 exhibits are admitted as filed on e-Docket,
11 specifically DES-USESC 1.0 Direct Testimony, file
12 date June 15, 2005, same prefix Exhibit 1.1 Analysis,
13 June 15, 2005, same prefix 2.0 Rebuttal, August 10,
14 2005. Those are admitted.

15 (Whereupon DES-USESE
16 1.0, 1.1 and 2.0 were
17 admitted into evidence
18 in Docket 05-0160,
19 -0161, -0162.)

20 MR. TOWNSEND: Thank you, Your Honor. And with
21 that we would tender Mr. Steffes for cross
22 examination.

1 JUDGE WALLACE: Go ahead, Mr. Fosco.

2 CROSS EXAMINATION

3 BY MR. FOSCO:

4 Q. Good afternoon, Mr. Steffes. My name is
5 Carmen Fosco. I am one of the attorneys representing
6 staff. I just have really a few, a brief line of
7 questioning that is intended to clarify part of your
8 proposal in this docket.

9 On lines 671 to 674 of your direct testimony in
10 the ComEd docket and I believe it is lines 633 to 636
11 of your direct testimony in the Ameren docket, you
12 indicate that customers with usage below 15,000
13 kilowatt hours of usage should be eligible for a
14 quarterly fixed price product

15 A. Yes.

16 Q. And just to clarify what you mean by that
17 proposal, do you mean that there should be four
18 auctions per year to arrange bundled supply for these
19 customers?

20 A. Yes.

21 Q. And would the term of the supply contracts
22 awarded in each of those quarterly auctions be for

1 three-month durations?

2 A. Yes.

3 MR. FOSCO: That's all we have. Thank you very
4 much.

5 WITNESS STEFFES: You are welcome.

6 JUDGE WALLACE: Mr. Stahl, did you have any?

7 MR. STAHL: We had reserved some time but at
8 this point I don't anticipate having any questions
9 for Mr. Steffes.

10 JUDGE WALLACE: All right. Mr. Robertson, did
11 IIEC have any?

12 MR. ROBERTSON: No.

13 JUDGE WALLACE: Go ahead, Mr. Bernet.

14 MR. BERNET: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. BERNET:

17 Q. Good afternoon, Mr. Steffes. My name is
18 Rick Bernet on behalf of Commonwealth Edison Company.
19 You are testifying today on behalf of Direct Energy
20 Services and US Energy Savings Corp., isn't that
21 right?

22 A. That is correct.

1 Q. No Coalition of Energy Suppliers, just
2 those two companies?

3 A. I am testifying on behalf of Direct Energy
4 Services and US Energy Savings Corp.

5 Q. And you have proposed an alternative to
6 ComEd's proposed auction, isn't that right?

7 A. We propose that the products that are used
8 through the wholesale auction are different than what
9 ComEd has proposed.

10 Q. Is it fair to say that Direct Energy and US
11 Energy concluded that this docket presented the
12 appropriate forum to present an alternative to
13 ComEd's proposal?

14 A. Yes.

15 Q. Were there any restrictions or limitations
16 placed upon Direct Energy or US Energy Savings or any
17 other party in this docket in terms of alternative
18 proposals to ComEd's proposal?

19 A. Well, as a member of the coalition there
20 was a memorandum of understanding with Commonwealth
21 Edison that, I don't know if it has been entered in
22 testimony, but outlined certain provisions of what

1 this arrangement will work through.

2 Q. Aside from that, any other limitations or
3 restrictions on proposals you could offer?

4 A. No.

5 Q. Now, directing your attention to lines 666
6 through 669 of your direct testimony.

7 MR. TOWNSEND: In the ComEd case?

8 Q. In the ComEd case. This cross applies to
9 both cases but I am talking about line 666 to 669 in
10 the ComEd case. Do you have that?

11 A. Lines 666 to 669, yes, I have that.

12 Q. So with respect to customers with usage
13 between 15,000 kwh and one megawatt, you are
14 proposing a monthly auction, isn't that right?

15 A. For those that have not been declared
16 competitive, yes.

17 Q. And that's customers under one megawatt,
18 isn't that right?

19 A. Between one megawatt and 15,000 kwh, right.

20 Q. Okay. And you just testified a few minutes
21 ago that there would be four auctions per year for
22 customers below 15,000 kwh, right?

1 A. Yes.

2 Q. So that would mean a total of 16 auctions
3 each year, right?

4 A. That would be one mechanism to deploy the
5 products that we are proposing, yes.

6 Q. Is that the mechanism you are proposing?

7 A. We are proposing that prices are utilized
8 in that monthly prices are utilized for certain
9 customers and quarterly prices are utilized for other
10 customers.

11 Q. Right. And my question is, would the
12 monthly prices be determined as a result of a monthly
13 auction?

14 A. They could be. There are other mechanisms
15 that you could have one auction per year, if that was
16 the limiting factor, that the utility simply could
17 not engage in multiple auctions per year because of
18 administrative or for whatever reason. You could
19 structure it differently such that you could still
20 get a monthly price but only have the auction occur
21 once per year.

22 Q. I would like to direct your attention to

1 lines 693 to 697 of your direct testimony in the
2 ComEd docket.

3 A. Yes, I see that.

4 Q. In your testimony there you are
5 recommending 16 auctions annually, isn't that right?

6 A. Yes. That's what I recommended in my
7 testimony. And what you asked me was, do you have to
8 do that and I answered, no, you could structure it
9 differently if you chose to, such that you could have
10 a single auction per year and work off an index or
11 some sort of futures price. What we proposed and
12 what we think is the most relevant and the most
13 effective in this market is, yes, 16 auctions.

14 Q. Thank you.

15 A. You are welcome.

16 Q. Each auction would be run by an auction
17 manager?

18 A. Yes.

19 Q. And each auction would be overseen by an
20 auction adviser on behalf of the Commission?

21 A. Yes.

22 Q. And the Commission would have to open 16

1 dockets to review the results of those auctions?

2 MR. TOWNSEND: Objection, it calls for a legal
3 conclusion.

4 MR. BERNET: He is testifying about the
5 process.

6 MR. TOWNSEND: The question is would they have
7 to and that really is a legal question.

8 MR. BERNET: I will rephrase it.

9 JUDGE WALLACE: Okay.

10 BY BERNET:

11 Q. Would you recommend that the Commission
12 open 16 dockets to consider the results of those 16
13 auctions?

14 A. No, I would recommend that there be an open
15 proceeding that every month the results come forward
16 and basically be reviewed. Sixteen dockets or how
17 many dockets, I think the ultimate goal is to get the
18 right price for fall service.

19 Q. Well, you don't disagree with me that the
20 Commission would have to review the results of each
21 auction, right?

22 A. That is the mechanism that's been utilized

1 in other places, is that the Commission reviews the
2 results of the auction and, therefore, the rest of
3 that contract. That is true. As we have seen in
4 other markets, in New Jersey, for instance, the
5 time --

6 Q. I am not asking about New Jersey right now.
7 I am asking about Illinois.

8 A. Okay.

9 Q. So is it your testimony that the Commission
10 in Illinois would have to review the results of each
11 of the 16 auctions?

12 A. I am not -- you know, would they have to, I
13 don't know. Is that a legal question? I am not an
14 attorney.

15 Q. Based upon your understanding?

16 A. My understanding is I don't know. Because
17 I am not an attorney, I don't know that they would
18 have to every time come up with another
19 administrative procedure.

20 Q. Now, is it your testimony that in
21 connection with the 30-day supply contracts -- strike
22 that. In connection with the monthly auction, is it

1 your testimony that ComEd would enter into 30-day
2 supply contracts with suppliers?

3 A. The contracts that would be entered into
4 through the auction would be a monthly product. It
5 would be a full requirements product, yes.

6 Q. So it would be the same full requirements
7 contract that ComEd has proposed; it would just be
8 for a shorter duration, is that right?

9 A. Well, I haven't reviewed in detail the
10 contract. But generally it would be a standard
11 contract that would be the same contract every month
12 all of the time. So simply bidders could come in,
13 they would bid, understand the contract, have a
14 30-day price.

15 Q. And is it your testimony that with respect
16 to the quarterly auctions the contracts that
17 suppliers would execute would be for full requirement
18 service, again similar to what ComEd has proposed
19 just in a quarterly duration?

20 A. Yes, that's right.

21 Q. Now, you understand that ComEd's proposal
22 involves traunches of 50 megawatts. Do you know how

1 many traunches would be subject to the monthly
2 auction in your proposal?

3 A. It would depend on the amount of default
4 service each month.

5 Q. Well, do you know how many traunches would
6 be up for auction?

7 A. It would depend on the amount of need. If
8 there were no default service, there would be no need
9 for an auction.

10 Q. But before the company would have default
11 service, there would have to be an auction to
12 determine whether or not customers could get default
13 services, isn't that right?

14 A. No, I don't follow you. Can you rephrase?

15 Q. Yeah, I certainly can. Do you know how
16 many megawatts, how many traunches, are up for
17 auction in ComEd's proposed CPP-A auction?

18 A. Not off the top of my head. I could go to
19 the testimony and find that. I would just have to
20 find the number of megawatts that are up for bid, I
21 suppose, and divide by 50.

22 Q. That is really my question. I just want to

1 know if you know with respect to the monthly auction
2 how many tranches would be subject to auction?

3 A. And again each month -- what our proposal
4 says is this, is that the 15th of the month you would
5 say how much default load would be between one
6 megawatt and 15,000 kilowatt hours would be on
7 default service the next month or that following
8 month. At that point in time you would auction off
9 that load. Our expectation is that a competitive
10 market would develop and customers would move away
11 from the default service, which is the ultimate goal
12 of the Customer Choice Act. And as that default load
13 went to zero, there would be no need to even hold an
14 auction because there would be no load on default
15 service.

16 Q. And that's because the customers would all
17 be being served by the RESes at that point, is that
18 correct?

19 A. One would hope that that would happen at
20 some point in the future.

21 Q. Now, you propose that there be no
22 enrollment windows for customers seeking default

1 auction products, right?

2 A. Yes.

3 Q. You also propose no minimum stay
4 requirement for customers seeking default supply. It
5 is lines 699 to 702 of your direct.

6 A. Thank you.

7 Q. No minimum stay, also?

8 A. Right. Given the monthly product and the
9 quarterly product and the hourly product as we
10 propose there, there is really no reason to limit a
11 customer's choice because --

12 Q. I think you answered the question.

13 A. Oh, okay, I just wanted to make sure I was
14 clear for the judges.

15 Q. And there is no exit fee for customers
16 exiting the default product, right?

17 A. No, because each month basically the only
18 obligation, wholesale suppliers wouldn't have an
19 ongoing commitment. Nobody would be financially
20 bound.

21 Q. So a customer could literally decide
22 whether to take default service on a daily basis?

1 A. Could -- well, it would be subject to the
2 limitations of the DASRing process, the switching
3 process. So it is really on a monthly or bill cycle
4 basis for those customers, which is why it is a
5 monthly product.

6 Q. And customers could switch on and off those
7 products with impunity, correct?

8 A. What do you mean when you say customers
9 have no impunity? I am not sure what you are saying.

10 Q. Well, a customer could switch on and off
11 the default service product without any financial
12 detriment?

13 A. And that is the beauty of the product.
14 ComEd would not be at risk. The customers wouldn't
15 be at risk. The wholesale suppliers wouldn't be at
16 risk. And so the product provides complete
17 flexibility while also providing a very low price.

18 Q. Under your proposal suppliers of energy in
19 the monthly auction would not know the volume of load
20 it was obligated to serve until the load actually
21 occurs, isn't that right?

22 A. No. As I described earlier, would you like

1 me to -- you can ask the question.

2 Q. Please.

3 A. On the 15th of the month prior to the month
4 of delivery you would know based upon the DASRing
5 rules or some point in time you would know based on
6 the switching rules that these customers would be
7 bundled customers, monthly-priced bundled customers.
8 They wouldn't be able to switch. They would follow a
9 bill cycle. At that point in time at a wholesale
10 auction the migration rate would be very, very
11 limited to nothing more than somebody just shutting
12 down their office in the middle of a bill signing.
13 So in fact I think the tranches that you would be
14 selling would be very clear and the wholesale
15 supplier would know the load following obligations
16 within the month.

17 Q. And how is it that a supplier would get the
18 load obligation information?

19 A. Well, you would -- when you say supplier,
20 what do you mean?

21 Q. Let's say, for example, the very first
22 monthly auction that occurs. Suppose I am a supplier

1 bidding in the first monthly auction.

2 A. A wholesale supplier or a RES?

3 Q. Yes, a wholesale supplier.

4 A. A wholesale supplier bidding in the --

5 JUDGE WALLACE: Wait, don't talk over each
6 other, please.

7 Q. These questions all relate to wholesale
8 suppliers.

9 A. Okay, thank you.

10 Q. So in the very first auction that a
11 wholesale supplier is bidding in, 30-day auction, how
12 would that supplier know what load he would be
13 required to serve?

14 A. Well, it would depend on the number of
15 traunches that that supplier won. It is a forward
16 view. If you bought five traunches, you would have a
17 250 megawatt hour allocation, full requirements into
18 ComEd.

19 Q. Okay. And my question really is when would
20 you know whether or not you are actually going to
21 serve all 250 megawatts?

22 A. Exactly the same way you do it under the

1 ComEd auction proposal. There is an auction; the
2 auction result closes. There is a contract and they
3 know three days later that, yep, I have to do that.

4 Q. Well, but in the ComEd proposal there is a
5 30-day sign-up window, isn't there?

6 A. But again the default service load
7 obligation that ComEd decides to auction off on X
8 day, the 15th of the month prior to the month of
9 delivery, the ComEd -- at that point in time you
10 could auction off a hundred tranches, 200 tranches
11 or zero tranches, based on if there is any default
12 load for the following month. And so once you have a
13 50-megawatt hour full requirements obligation, you
14 deliver your 50 megawatt share of the default service
15 order.

16 Q. Are there any switching rules attached to
17 any of your testimony?

18 A. The only rules that would apply would be
19 normal switching rules that would work off of the
20 bill cycle process as ComEd has proposed.

21 Q. So it is not in your testimony; you are
22 talking about the switching rules in ComEd's

1 testimony, is that right?

2 A. Yes.

3 Q. The cost of the 16 auctions would be
4 incorporated in the prices of default products,
5 wouldn't they?

6 A. All procurement-related costs should be
7 included within the outcome of the wholesale
8 auctions.

9 Q. Direct Energy and US Energy Savings Corp.
10 have not conducted any study or analysis that
11 quantifies the costs of those 16 auctions, have they?

12 A. No, we haven't. I have not.

13 Q. The companies have not, right?

14 A. My company, I have not; my company has not.

15 Q. Your testimony contains no survey of
16 suppliers indicating any interest in quarterly or
17 monthly auctions, does it?

18 A. Well, it contains a survey of two company
19 suppliers that would --

20 Q. Right, I understand that. But aside from
21 that there is no other survey, right?

22 A. I have not surveyed other wholesale

1 suppliers.

2 Q. No suppliers testified in this case that it
3 prefers the Direct Energy, US Energy monthly and
4 quarterly auctions over those proposed by ComEd,
5 right?

6 A. Well, given that both of my companies could
7 become, yes, two have provided that. My company has
8 --

9 Q. I understand. I said besides them.

10 A. Oh, I am sorry.

11 Q. Right?

12 A. To my knowledge.

13 Q. Direct Energy and US Energy are not
14 certified RESes in Illinois, are they?

15 A. Direct Energy is not a certified RES.
16 Subject to check on US Energy Savings Corp.

17 Q. No other RES testified in support of this
18 proposal, did it?

19 A. Not that I am aware of.

20 Q. And Commission Staff also doesn't support
21 this proposal, isn't that right?

22 A. Well, you would have to ask Commission

1 Staff.

2 Q. I mean, they haven't testified that they
3 support it?

4 A. Potentially they will change their opinion.

5 Q. I am going to talk a little bit about the
6 residential default service. Under your proposal
7 residential customers on default service would see
8 electricity prices change every 90 days, is that
9 right?

10 A. Every quarter, that is correct.

11 Q. And the only way for a residential customer
12 to avoid the volatility of price changes every 90
13 days would be to sign up with the RES, is that right?

14 A. That is correct.

15 Q. And the only way for such customers to
16 benefit from retail competition as proposed by you is
17 if energy prices for RESes are lower than the default
18 price, isn't that right?

19 A. No. In fact, under our proposal as our
20 testimony showed we believe that given that there
21 won't be premiums, as high a premium imposed because
22 it is a monthly and quarterly price and the risks are

1 significantly lower than a three-year or five-year
2 contract, that even customers on default service will
3 do better than they would otherwise do on the ComEd
4 proposal.

5 Q. Do you think that residential customers
6 would be more prone to switch to RES supply if they
7 defaulted to the spot market?

8 A. You have a lot of issues behind that
9 hypothetical. So unless you provide more clarity on
10 what that means, I don't know how I could answer for
11 each customer in the market.

12 Q. It means that residential customers would
13 default to spot if they didn't have a RES supply.

14 A. And what's your question again?

15 Q. Do you think that residential customers
16 would be more prone to switch to a RES if the default
17 supply -- if the default supply alternative was the
18 spot market?

19 A. I think as we have seen with other
20 customers and, for instance, in New Jersey where
21 customers are put on an hourly rate at the larger
22 level, customers are inclined to take action. So,

1 yes.

2 Q. Why is that not part of your proposal?

3 A. What do you mean?

4 Q. Well, your proposal is designed to
5 encourage switching, isn't that right?

6 A. My proposal is designed to find the
7 balanced default service proposal that will best
8 enable as we go to the next transitional phase
9 customer choice in Illinois.

10 Q. Well, is it your testimony that your
11 proposal is designed not to encourage switching to
12 RES supply?

13 A. I think what my proposal again does is lays
14 out a default service mechanism which best meets the
15 needs of Illinois consumers that will allow them both
16 to have the best price default service, and if they
17 so choose, to have competitive offers in the
18 marketplace.

19 MR. BERNET: Move to strike as non-responsive.

20 MR. TOWNSEND: I think that was responsive.

21 MR. BERNET: It is a pretty simple question.

22 JUDGE WALLACE: Overruled.

1 BY MR. BERNET:

2 Q. You would agree with me that not all
3 residential customers are interested in changes in
4 their electricity rates every 90 days?

5 A. Under the ComEd proposal which changes
6 rates every 190 days, what we are saying is that a
7 better proposal, such that they can get on lower
8 price default service and get competitive offers, we
9 would recommend that their rates change 90 days if
10 they do nothing.

11 Q. Would you say that market prices are
12 currently trending up or down, forward electricity
13 market prices?

14 MR. TOWNSEND: Objection, beyond the scope.

15 MR. BERNET: He has testified about retail
16 competition. I think it is a fair question whether
17 or not prices are going up or down.

18 JUDGE JONES: I believe it has a reasonable
19 level of relevancy to what this witness testified to
20 and a lot of the answers that he has been giving
21 today, and he has been given quite a bit of latitude
22 in those answers. So given all that, I think it is a

1 reasonable question.

2 WITNESS STEFFES: I would ask if I could have
3 some clarification. When you say forward market, are
4 you talking about balance of the month, calendar
5 year, next year? What time frame are you saying
6 going up or going down? From last week, today, last
7 month, two months ago?

8 BY MR. BERNET:

9 Q. The next six months.

10 A. From what time frame?

11 Q. From now.

12 A. You mean from yesterday's price? So if I
13 wanted to trade the next six months yesterday versus
14 today.

15 Q. Fine.

16 A. I haven't consulted my trading desk to know
17 if yesterday the price today for trading that product
18 in the northern Illinois market would have been up or
19 down from yesterday.

20 Q. So you have no opinion as to whether or not
21 forward electricity prices are generally trending up
22 or down?

1 MR. TOWNSEND: Objection, mischaracterizes the
2 testimony.

3 JUDGE JONES: This is cross so it is legitimate
4 cross. At least it is a legitimate cross question.

5 WITNESS STEFFES: Can you repeat the question?
6 I am sorry.

7 BY MR. BERNET:

8 Q. You have no opinion as to whether or not
9 electricity, forward electricity prices, are
10 generally trending up or down?

11 A. No, I have an opinion about what's
12 happening in the forward market.

13 Q. What is that?

14 A. If I may finish?

15 Q. Sure.

16 A. Thank you. What I was trying to say is
17 that when people say the forward market, there are
18 lots of time frames that comprise the forward market.
19 And I just -- so have natural gas prices over the
20 last year gone up? Yes. Have electricity prices,
21 therefore, and coal prices and emission prices gone
22 up? Yes. But if you were to say has the cal '07

1 market gone up or down, I would just have to check to
2 see how the cal '07 market is trading because it is
3 not something that I do on a day-to-day basis. Cal
4 '07 meaning the calendar year '07 price for
5 electricity in the given market.

6 Q. What is your best estimate of the
7 percentage of residential customers that would switch
8 to a RES when faced with 90-day volatility for a
9 default product?

10 A. Well, I know that in Texas, and Texas
11 basically changed its prices or historically changed
12 prices since deregulation twice a year. So that
13 three prices a year is not quite 90 days, but it is
14 close. That you have got over 20 percent of the
15 market to switch, that had the right to switch. I
16 think, you know, it is both the rate of change but
17 also the overall price that drives customers to
18 choose. So the only relevant facts that I have is to
19 sort of try to compare to Texas, and I think so plus
20 20 percent.

21 Q. Have you conducted any analysis of the
22 Illinois market and the propensity of residential

1 customers to switch based upon the 90-day default
2 product?

3 A. No, no.

4 Q. Directing your attention to lines 21 to 23
5 of your rebuttal testimony.

6 A. What line again? I am sorry.

7 Q. 21 to 23. Actually, 20 to 23.

8 A. Okay.

9 Q. You testify that Direct Energy and USESC's
10 proposal allows for the establishment of a vibrant
11 competitive retail market while insuring that
12 non-choosing customers receive a just and reasonable
13 default price for their electric service, right?

14 A. Yes, that is my testimony.

15 Q. And when you say a vibrant and competitive
16 retail market, do you mean one where RESes are able
17 to offer energy prices that are lower than the
18 default price?

19 A. That RESes are able to meet the needs, that
20 there are a number of RESes that are able to offer a
21 number of products that best meet the need of
22 customers.

1 Q. Well, let's just talk about price.

2 A. I am sorry but you can't talk just about
3 price when you talk about customers.

4 Q. Well, is it your testimony that RESEs will
5 -- strike that. Do you believe price is important to
6 customers in deciding from whom to purchase
7 electricity?

8 A. Amongst other things, yes.

9 Q. Would you agree with me that it is one of
10 the most important factors that customers consider?

11 A. Amongst other things, yes.

12 Q. Is there any single factor you think is
13 more important to customers?

14 A. Each customer -- and that's the beauty of a
15 competitive market -- is allowed to make the
16 decisions that are best for them. So price is one of
17 many characteristics.

18 Q. Would you agree with me that if a RES is
19 able to offer a price that is lower than the default
20 price, a customer is more likely to sign up with the
21 RES, all other things being the same?

22 A. So all other things being equal if I can

1 mimic the bundled price and show a discount?

2 Q. Right.

3 A. Yes, assuming that customers decide to act
4 rationally and take the savings.

5 Q. So in that example the default price would
6 be just and reasonable even though it would be higher
7 than the price offered by the RES?

8 A. Well, the question of a just and reasonable
9 default price which I reference and I think is the
10 same is simply just and reasonable in that the
11 utility has utilized a wholesale procurement model
12 that allows for transparency and insures that they
13 are passing through just the wholesale costs, as the
14 ComEd proposal would be just and reasonable with one
15 and three and five-year contracts.

16 Q. So in this example is it your testimony
17 that the default price would be just and reasonable
18 even though it would be higher than the price offered
19 by a RES?

20 A. In a market RESes will offer all kinds of
21 products. Some will be higher, some will be lower.
22 The question about default service being just and

1 reasonable, my belief is that it comes around through
2 a legitimate process that best buys the product that
3 they need for default service.

4 MR. BERNET: Move to strike, non-responsive.
5 It is a very simple question.

6 JUDGE JONES: Any response?

7 MR. TOWNSEND: I think it is responsive.

8 MR. BERNET: It is giving speeches.

9 JUDGE JONES: I guess one test I try to apply
10 when there is an objection to an answer is whether
11 the witness attempted to answer in some manner the
12 question that was asked or a little different
13 question that the witness preferred to answer. I
14 think this is a case of the latter. I mean, I think
15 that the witness took the question really to give an
16 answer to a slightly different, although admittedly
17 relevant, question. So the objection I believe is
18 correct. The answer is stricken.

19 BY MR. BERNET:

20 Q. So in the example that we just discussed
21 where the RES would offer a price lower than the
22 default price, would that be a situation where the

1 default price would be just and reasonable even
2 though it is higher than the RES's price?

3 A. Yes.

4 Q. Thank you. Would you agree that in this
5 scenario the default price would be above the retail
6 market price?

7 A. It may or may not be. The RES may be
8 discounting their price below their own cost for some
9 other reason. I can't speak for all RESEs at all
10 times.

11 Q. Can you give me an example of a customer
12 that uses approximately 15,000 kilowatt hours of
13 energy a year?

14 A. Very, very large home or a very small mom
15 and pop establishment.

16 Q. And under your proposal the electricity
17 prices for those customers would change every 30
18 days?

19 A. Yes, for people above 15 -- around, I think
20 it is, above 15,000.

21 Q. Right, I am not -- well, let me go back. I
22 am talking about a customer on the lower end of the

1 15,000 kwh to one megawatt service?

2 A. Above 15,000.

3 Q. Yes?

4 A. 15,000 and above.

5 Q. Right, so that's a mom and pop or a large

6 home, mom and pop store or a large home?

7 A. It could be, yes.

8 Q. And to avoid volatility of monthly price

9 fluctuations what options would that customer have

10 under your proposal? What supply options?

11 A. To avoid what now?

12 Q. To avoid volatility of monthly price

13 fluctuations.

14 A. To avoid the variability in the default

15 monthly price, the customer would have the option of

16 going to a RES.

17 Q. Would that customer have any other options

18 under your proposal?

19 A. No.

20 Q. Your testimony contains no survey of

21 customers indicating that they support your proposal,

22 is that right?

1 A. No.

2 Q. Directing your attention to your rebuttal
3 testimony, lines 317 to 319?

4 A. Yes, I am.

5 Q. Do you have that?

6 A. Yes, sir.

7 Q. You testify that similarly such monthly and
8 quarterly default pricing in Illinois would insure
9 that there was a greater and more efficient link
10 between wholesale and retail prices than the ComEd
11 proposal would guarantee. That's your testimony,
12 right?

13 A. Yes, sir.

14 Q. And you are advocating the development of
15 the retail market in this case?

16 A. Yes, sir.

17 Q. And if the Commission adopts your proposal,
18 you believe that more load would be supplied by a RES
19 than would take default supply, right?

20 A. I only hesitate because I can't think for
21 all three million households and, you know, but my
22 belief is, it is my belief that my proposal, our

1 proposal would create better opportunity for
2 customers to see a number of products being offered
3 by a number of competitors.

4 Q. Right. But the goal of your proposal is to
5 encourage switching, isn't it?

6 A. The goal of my proposal is to encourage the
7 opportunity for entrants such as Direct Energy to
8 come in and make offers. Switching would be --
9 because I am not advocating that customers have to
10 switch, switching would still be left to the choice
11 of the consumer.

12 Q. Well, I believe in response to a question
13 Mr. Fosco asked that you testified that your ultimate
14 goal would be to have all customers served by a RES?

15 A. The ultimate goal of the Customer Choice
16 Act I think in a competitive retail market is that,
17 yes, all customers would choose a RES, but that would
18 be done only after they made the right decision for
19 their house or their business.

20 Q. And when you charge a customer for supply,
21 you are including a markup for profit, isn't that
22 right?

1 A. My company is a for-profit company. So,
2 yes, we charge -- we do look to make a gross margin
3 in that.

4 Q. And that's true with every retail supplier,
5 isn't that true?

6 A. Except for the default service provider.

7 Q. Right. And it is your understanding that
8 ComEd is going to acquire -- through its proposal
9 ComEd would acquire wholesale power and pass that
10 cost on to customers with no markup?

11 A. It is -- yes, my proposal would, like the
12 ComEd proposal, would simply pass through the
13 wholesale costs with no gross margin.

14 Q. Now, it is your understanding that ComEd
15 has proposed a contingency plan in the event that any
16 of its auctions are under subscribed, right?

17 A. It is my understanding that there is a
18 contingency plan in the ComEd proposal.

19 Q. And your testimony contained no contingency
20 plan if the auctions that you propose are under
21 subscribed, right?

22 A. I can't find it but I think my testimony

1 provided that we would utilize a similar process that
2 ComEd would utilize.

3 Q. Can you tell me where that is in your
4 testimony?

5 A. I wish I could. I am looking for it right
6 now. It's on line 395 to 401. The question is how
7 do you respond to the criticisms that your plan
8 causes under subscription and the answer is basically
9 that they have contingency plans. We would utilize
10 the same contingency plans. But, again, I think our
11 core message as we say in our direct is assuming
12 there is an economic opportunity that people can make
13 profit on 50 megawatt full requirement blocks, people
14 would set up 50 megawatt full requirement blocks. If
15 that's not going to happen, then we are going to have
16 a bigger problem.

17 Q. Well, if the Commission adopts your
18 proposal, is it your testimony that there is a
19 contingency plan in place to deal with under
20 subscription of your auction proposals?

21 A. My testimony would be that we would utilize
22 something very similar, if not identical, to what

1 ComEd would propose for itself if they are under
2 subscribed in their own auction.

3 Q. You have never testified -- you have never
4 presented sworn testimony before a state public
5 utility commission regarding the utility adopting a
6 competitive procurement procedure, right?

7 A. I did present testimony recently in front
8 of the Maryland Commission, and I think it was when I
9 initially provided that response, I hadn't. And then
10 I adopted someone else's testimony at the last
11 minute, so I guess I have, although it is sort of a
12 debate about hourly pricing for certain customers,
13 not really a competitive procurement plan. But it is
14 similar so I guess I need to make sure that I mention
15 that.

16 Q. I am going to ask you a couple questions
17 about your background.

18 A. Yes.

19 Q. You were at Anderson Consulting?

20 A. Yes.

21 Q. From when to when?

22 A. From 1989 to 1992.

1 Q. And what was your responsibility when you
2 were at Anderson?

3 A. Well, I started out in the information
4 systems group, programed systems for pipelines and
5 built accounting systems for grocery stores and then
6 did some business process engineering for a hotel.

7 Q. And then you were employed at Enron from
8 when to when?

9 A. From 1994 until February 2002.

10 Q. What did you do for Enron?

11 A. I was in the government regulatory affairs
12 shop.

13 Q. And then you were with UBS?

14 A. Yes, UBS acquired the trading business from
15 Enron, and I went over there to support their
16 regulatory and government affairs at UBS Energy.

17 Q. And did you start there in February also?

18 A. Right.

19 Q. And you were there until your present
20 position?

21 A. I was there until the end of September of
22 2003, yes, when I came to Direct Energy in October of

1 2003.

2 MR. BERNET: I have nothing further at this
3 point.

4 MR. STAHL: Judge Wallace, based on
5 Mr. Bernet's questions can I ask three questions? If
6 you don't want me to, I won't.

7 JUDGE WALLACE: Three and three only.

8 MR. STAHL: Three and three only, thank you.

9 JUDGE WALLACE: Mr. Fitzhenry, you did not have
10 any questions?

11 MR. FITZHENRY: I think we had five minutes
12 listed.

13 JUDGE WALLACE: Do you want to do your five
14 minutes?

15 MR. FITZHENRY: No, I will defer to Mr. Stahl.
16 It is now four minutes, by the way, in light of Mr.
17 Bernet's cross examination.

18 MR. STAHL: Thank you.

19 CROSS EXAMINATION

20 BY MR. STAHL:

21 Q. Good afternoon, Mr. Steffes. This is David
22 Stahl for Midwest Generation. Mr. Steffes, have you

1 made any effort to determine whether suppliers would
2 put themselves at risk willingly every 30 days to
3 have another auction every month instead of making
4 some other longer term arrangements to dispose of
5 their capacity and energy?

6 A. It is -- well, my knowledge of the industry
7 is that people sell next day, next week, but also by
8 month, next month, all the time. So, yes, I have --
9 in terms of my experience I understand that people
10 would sell for next month power.

11 Q. I am talking about an effort to determine
12 from the suppliers, the likely suppliers in this
13 case, whether they would be willing to do that?

14 A. I have not communicated with your company
15 or ExGen to ask them what their interests are, if
16 that's what you mean.

17 Q. You have not or any other potential
18 supplier, have you? You haven't communicated with
19 any other potential suppliers?

20 A. Well, other than my own company that could
21 act in that manner.

22 Q. Right. You have not presented in your

1 testimony or otherwise analyzed the extent to which
2 your proposal for quarterly or monthly auctions might
3 in fact diminish competition in the wholesale market?

4 JUDGE JONES: Is that a question?

5 MR. STAHL: Yes.

6 A. What is the question?

7 Q. The question is, you have not either
8 analyzed or presented in your testimony the extent to
9 which your proposal for monthly or quarterly auctions
10 might diminish competition in the wholesale market,
11 have you?

12 A. Well, I think I present testimony, and I
13 would have to find it, that arguably a monthly
14 product would create more liquidity than a year term
15 market and, therefore, make the wholesale market more
16 robust. That's my assertion.

17 Q. That's your assertion. Have you compared
18 in your testimony anywhere the extent to which
19 competitive effects in the wholesale market might
20 outweigh any beneficial competitive effects you see
21 in the retail market?

22 A. I think you need to have a well-functioning

1 retail and wholesale market to make them both work,
2 but I have not undertaken any studies.

3 MR. STAHL: Thank you. I have nothing further.

4 JUDGE WALLACE: Mr. Fitzhenry?

5 MR. FITZHENRY: Yes.

6 CROSS EXAMINATION

7 BY MR. FITZHENRY:

8 Q. Good afternoon, Mr. Steffes. My name is Ed
9 Fitzhenry and I am here on behalf of the Ameren
10 companies and I am not going to ask you why you left
11 Enron Corporation but I will move on to the
12 understanding about the regulatory landscape in Texas
13 which you cite at page 5 and 6 of your direct
14 testimony. Would you turn --

15 A. In Ameren?

16 Q. In the Ameren testimony.

17 A. Sure, sure. Okay.

18 Q. Do you have that before you?

19 A. Starting at line 91, I think, is that
20 right?

21 Q. Sure. First of all, I understand that you
22 say there at line 94 that Direct Energy provides

1 competitive services in the Houston and Dallas
2 markets. And then later on at lines 103 and 104 you
3 say that Direct Energy Service is the provider of
4 last resort in the Houston area. Does it not also or
5 does it also serve as the POLR, P-O-L-R, in the
6 Dallas area as well?

7 A. Not to my knowledge. We are not the POLR
8 in the TXU market right now. Subject to check, I
9 could check. But I don't believe so.

10 Q. Very well. Do I understand correctly that
11 Direct Energy, for example, is the provider of last
12 resort and is also a competitive provider at the same
13 time?

14 A. In Texas we are really -- we have three
15 categories that we operate as. Do you want me to can
16 -- I am trying to answer your question.

17 Q. First of all, am I correct in understanding
18 that Direct Energy is the provider of last resort and
19 is also a competitive provider of retail services,
20 retail electric services?

21 A. We are a POLR for certain customers in the
22 center point territory. We are a competitive

1 retailer in that territory as well as in TXU. We are
2 also a price-to-beat provider, if you will let me use
3 that term, in WTU and Central Power & Light's
4 territory.

5 Q. The two affiliates are the price-to-beat
6 provider?

7 A. West Texas Utilities and Central Power &
8 Light are PTB providers, right.

9 Q. As you have explained that, would you agree
10 that neither Ameren nor ComEd can serve as both the
11 provider of last resort as well as also be a
12 competitive provider of retail electric services in
13 Illinois, if you know?

14 MR. TOWNSEND: Objection, calls for -- I think
15 it calls for a legal conclusion. I object to the
16 question. It calls for a legal conclusion.

17 MR. FITZHENRY: I don't think it does. I am
18 just trying to understand what his understanding is
19 about what goes on here in Illinois and how it plays
20 into his understanding. He supports the Texas, you
21 know, regulatory regime for positions in his
22 testimony, and if he has an understanding about what

1 the Ameren companies and ComEd can do or not do, that
2 would be helpful.

3 JUDGE JONES: The question will be allowed. I
4 believe we have had probably dozens of witnesses in
5 this case offering opinions on various subjects, some
6 of which may be viewed as somewhat legal in nature,
7 at least they are interpreting statutes and all kinds
8 of things like that. So I think where the parties
9 have tried to draw the line and be practical is that
10 they have said that they are essentially not
11 testifying as legal experts but more of a layman's
12 view or an expert's view but not a legal expert. And
13 I think we have got a lot of that going on. And
14 that's not to say that those objections aren't worthy
15 of consideration, but I think we need to be practical
16 as well. So we would ask the witness to answer the
17 question, if he has such an opinion, other than as a
18 legal expert.

19 WITNESS STEFFES: Can you ask me again?

20 BY MR. FITZHENRY:

21 Q. As you understand the role of Direct Energy
22 in Texas to be a provider of last resort, do you have

1 an understanding as to whether Ameren, Ameren
2 companies, or Commonwealth Edison Company also serves
3 in that capacity or in that role?

4 A. The two -- I am trying to answer the
5 question. The two markets are different and the
6 statute that underlay them, again not being an
7 attorney, are different. So Texas has one structure;
8 Illinois has a different structure. I guess to try
9 to answer your question, it is my understanding that
10 the distribution companies in Illinois would need to
11 set up an affiliate if they wanted to act as a RES.

12 Q. But my question is more about the utilities
13 themselves. Did they serve as the provider of last
14 resort, as you understand that term and how it is
15 employed in Texas?

16 A. In Illinois it would be my understanding
17 that the utility -- can I strike that? There is a
18 discussion that we had in the post-2006 process about
19 what are the obligations of a utility and I don't
20 think we ever reached a conclusion. I think some
21 people have an opinion. But generally in Illinois
22 for the purpose of these discussions most people

1 believe that the utility will act as the POLR in the
2 price to be provided which is one and the same in
3 Illinois.

4 Q. Do you have an understanding or an opinion
5 as to whether or not Ameren companies, the utilities,
6 the Commonwealth Edison Company utility can also be a
7 competitive provider of retail electric services in
8 the same way that Direct Energy can in the
9 circumstances that you described in your earlier
10 answer?

11 A. The hypothetical doesn't work because
12 Direct Energy -- none of the Direct Energy companies
13 own any wires or pipes anywhere. So I am not sure
14 that the hypothetical works. I can't answer the
15 question.

16 Q. That's fine, thank you. Let's talk about
17 the price-to-beat providers. And the two affiliates
18 of Direct Energy, I understand, are West Texas and
19 CPL, correct?

20 A. That's correct.

21 Q. There at line 96 you say that the
22 price-to-bet service is the semi-price of regulated

1 retail electric service and it goes on from there.

2 What does it mean when you say semi-price of
3 regulated retail electric service?

4 A. In Texas on 1/1/2007 all prices will be
5 deregulated. At the current time the price-to-beat
6 providers are not allowed to move their prices at
7 their leisure. They have a formulaic approach that
8 the PUCT has established, the Public Utility
9 Commission of Texas, has established. So I use the
10 term "semi-regulated" to recognize that it is not
11 completely deregulated but it is not fully regulated.

12 Q. And this price-to-beat service is in place
13 today?

14 A. Yes.

15 Q. You say it can't change until 2007,
16 correct?

17 A. No. On 1/1/2007 all price regulation for
18 all customers goes away. You are in a fully
19 competitive market. So Texas on 1/1/07 is going to
20 have no price regulation. Illinois is talking about
21 what are we going to do. That's what the
22 price-to-beat provider does. Right now the

1 price-to-beat provider can move their prices twice a
2 year based on an underlying movement in natural gas
3 prices.

4 Q. And they are capped at 125 percent?

5 A. The POLR provider rates are capped at 125
6 percent of the price-to-beat range. In most
7 instances there are not customers on the POLR
8 provider. In Texas POLR providers typically don't
9 serve any customers because most people are served by
10 a competitive supplier or a RES, a PPB provider.

11 Q. So every six months the price-to-beat price
12 can change?

13 A. No, twice a year depending on underlying
14 natural gas prices the price can change. So twice a
15 year a price-to-beat provider has their -- when
16 underlying natural gas prices move, twice a year they
17 can file up or file down. And so it is formulaic.
18 But once they use those two price increases or two
19 price decreases, they can't change their prices for
20 the remainder of the year.

21 Q. And does that occur at the same time for
22 all price-to-beat service providers?

1 A. No, every price-to-beat provider has -- it
2 is at their discretion to use the formula.

3 Q. Let's move to another subject. I have got
4 about two minutes left, I think.

5 JUDGE WALLACE: It sure is a very elastic two
6 minutes.

7 JUDGE JONES: At least the first two was.

8 BY MR. FITZHENRY:

9 Q. Pages 18 and 19 of your direct you point to
10 the success of the Community Energy Cooperative and
11 their pilot program and talk about it at length,
12 correct?

13 A. Starting on line 373, yes, that is correct.

14 Q. And I take it from your discussion there
15 and your citation to their website that you are
16 generally familiar with that program?

17 A. I am generally familiar with the program.
18 I am not an expert on all of the details of the
19 program.

20 Q. Would you agree that as part of that
21 program there is a price protection cap in place?

22 A. It is my understanding that there was a

1 price protection cap.

2 Q. Now, you are not proposing in your
3 testimonies here today anything of that kind, are
4 you?

5 A. We are proposing --

6 Q. The question is, are you proposing as far
7 as anything that is in your testimony a price
8 protection cap for residential customers?

9 A. We are proposing wholesale auctions, but
10 there is no cap that would limit the price.

11 Q. And is it correct that this particular
12 program is tied to ComEd's Rate RHEP?

13 A. I am sorry, is our proposal or --

14 Q. No, the program that we are talking about.

15 A. I am sorry.

16 Q. Discussed at pages 18 and 19 of your
17 testimony.

18 A. Yes, it relates to ComEd's.

19 Q. And is it correct that each customer
20 participating in this program receives a 1.4 cent per
21 kilowatt hour credit in each monthly billing cycle?

22 A. I am not aware of that fact.

1 Q. Is there anything about your proposals in
2 your direct or rebuttal testimony where you are
3 offering credit to customers that are participating
4 in, whether it is a default quarterly auction or
5 whatever else that you might be proposing, is there
6 any kind of credit mechanism associated with anything
7 that you are proposing here today?

8 A. No.

9 MR. FITZHNERY: That's all the questions I
10 have. Thank you.

11 JUDGE WALLACE: Redirect?

12 MR. TOWNSEND: If I could have just a minute.

13 (Whereupon the hearing
14 was in a short recess.)

15 JUDGE WALLACE: Back on the record.

16 MR. TOWNSEND: No redirect, Your Honor.

17 JUDGE JONES: Thank you, Mr. Steffes. You may
18 leave the stand.

19 (Witness excused.)

20 MR. TOWNSEND: Thank you, Your Honors. At this
21 point I would like to re-enter my appearance on
22 behalf of the Coalition of Energy Suppliers and call

1 the panel of Mr. Domagalski and Spilky. Your Honors,
2 we would note that these witnesses have been
3 previously sworn and their testimony was already
4 introduced into evidence in the proceeding.

5 RICHARD SPILKY & JOHN DOMAGALSKI
6 recalled as Witnesses on behalf of the Coalition of
7 Energy Suppliers, having been first duly sworn, were
8 examined and testified as follows:

9 DIRECT EXAMINATION (Continued)

10 BY MR. TOWNSEND:

11 Q. But for the record, Mr. Spilky, could you
12 please identify yourself and spell your last name?

13 A. (Mr. Spilky) Richard Spilky, Spilky is
14 spelled S-P-I-L-K-Y.

15 Q. And, Mr. Domagalski, if you could do the
16 same?

17 A. (Mr. Domagalski) Yes. John Domagalski
18 which is spelled D-O-M-A-G-A-L-S-K-I.

19 MR. TOWNSEND: And with that, Your Honor, we
20 would tender this panel for cross examination.

21 JUDGE JONES: Thank you. According to the
22 chart there is some cross. And from the looks of the

1 repositioning at the table I think the chart is
2 probably correct. Let's see who still has cross of
3 these panel witnesses. Mr. Hanzlik has some. Who
4 else?

5 MR. HANZLIK: Thank you.

6 CROSS EXAMINATION

7 BY MR. HANZLIK:

8 Q. Good afternoon. My name is Paul Hanzlik.

9 JUDGE WALLACE: I don't think we have anybody
10 listening, but if you would pull the microphone
11 closer up to you. Nobody outside this room.

12 JUDGE JONES: Probably across the hall.

13 Q. Good afternoon. It is Paul Hanzlik
14 appearing for Commonwealth Edison Company. And I
15 will direct my questions just to the panel and then
16 you can determine who best will answer each question,
17 if that's acceptable.

18 MR. TOWNSEND: Your Honors, before we start, I
19 would like to note for the record please that today
20 is Mr. Spilk's 40th birthday. Thank you.

21 JUDGE WALLACE: This isn't Chi Chi's. We won't
22 sing Happy Birthday.

1 (Laughter)

2 BY MR. HANZLIK:

3 Q. Mr. Domagalski and Spilky, do you recall
4 that Dr. O'Connor recommended that customer groupings
5 be changed from the proposal made by ComEd to remove
6 customers with demands between 400 kw and 1 mw from
7 the blended product auction and instead offer these
8 customers a default product based on a one-year
9 auction product, isn't that correct?

10 A. (Mr. Domagalski) Yes, that is correct.

11 Q. And ComEd -- you also recall that ComEd
12 accepted that recommendation with certain
13 modifications in Mr. McNeil's surrebuttal testimony?

14 A. (Mr. Domagalski) Yes, we reviewed Mr.
15 McNeil's surrebuttal testimony, that is correct.

16 Q. And are you also aware that yesterday Dr.
17 O'Connor in his testimony said that ComEd's proposed
18 modifications were reasonable and acceptable to CES?

19 A. (Mr. Domagalski) Right, that is correct.

20 Q. Now, the removal of these customers from
21 the blended product auction and offering them a
22 one-year auction product would provide a more direct

1 way to allocate the cost of migration risk to those
2 customers who from a supplier's perspective create
3 the migration risk, wouldn't it?

4 A. (Mr. Domagalski) In general, yes, I would
5 agree with that.

6 Q. And this change that was agreed to by the
7 company and by CES, by Dr. O'Connor on behalf of CES,
8 would also eliminate the need for an administratively
9 determined allocation method to assign migration
10 costs to those customers, wouldn't it?

11 A. (Mr. Domagalski) Yes. In our rebuttal
12 testimony we had indicated there are two approaches,
13 one being a non-allocation approach and one being an
14 allocation approach whereby you would actually
15 allocate the migration as a premium. Yes, we did
16 indicate that we would not oppose the non-allocation
17 approach.

18 Q. And the reason the non-allocation approach
19 would be an alternative to the allocation approach is
20 that suppliers would factor a mitigation risk into
21 their bids and ultimately the cost of their product,
22 isn't that true?

1 A. (Mr. Domagalski) We had indicated yes,
2 that suppliers, the wholesale bidders, would in fact
3 incorporate whatever migration premium directly into
4 their bids. Therefore, we would not necessarily need
5 to allocate that.

6 Q. So the answer to my question was yes?

7 A. (Mr. Domagalski) Yes.

8 Q. Now, if the Commission does not accept
9 ComEd's and CES's proposed modification with respect
10 to these customers, the 400 kw to 1 mw customers, you
11 do support an adjustment to the supply price for
12 these customers to account for migration risk, don't
13 you?

14 A. (Mr. Domagalski) You are talking about the
15 blended auction?

16 Q. That is correct.

17 A. (Mr. Domagalski) Yes, that is correct.

18 Q. And in your testimony under those
19 circumstances you argue that the migration risk would
20 have two components, a component to reflect the
21 amount of RES and PPO load that is likely to switch
22 if savings are available by switching and a second

1 component made to account for the risk to suppliers
2 of price change or price volatility?

3 A. (Mr. Domagalski) Yes, that is correct.

4 Q. Now, in your calculations you assume a
5 hundred percent of PPO load would switch based on
6 price, don't you?

7 A. (Mr. Domagalski) Yes. We had indicated in
8 testimony that, yes, in fact we believe that a
9 hundred percent would be more reasonable.

10 Q. Now, there are some charts in your
11 testimony. I am referring to CES Exhibit 3.0 which
12 is your rebuttal -- your direct testimony, on page 6
13 and charts on page 7 as well. Do you have that
14 reference?

15 A. Yes, we did.

16 Q. These charts show the assumed change in
17 bundled load in and out of PPO, RES and bundled
18 service since 2001, don't they? I am sorry, they
19 show the annual change in PPO, RES and bundled load
20 for customers in certain classes since 2001?

21 A. (Mr. Domagalski) Yes, that is correct.

22 Q. Now, these charts deal with load; they

1 don't show that a hundred percent of PPO customers
2 have switched in and out of bundled service, do they?

3 A. (Mr. Domagalski) No, they don't.

4 Q. And they don't show that all of the load
5 has switched with respect to these particular
6 customers in and out of bundled service, do they?

7 A. (Mr. Domagalski) No.

8 Q. But you assume a hundred percent of PPO
9 load and customers would switch and they would do so
10 on the basis of price, don't you?

11 A. (Mr. Domagalski) Right. Having reviewed
12 the material --

13 Q. Is the answer to my question yes?

14 JUDGE JONES: You have actually two questions
15 rolled in there, so.

16 Q. Let me restate the question. Isn't it
17 correct that you assume that a hundred percent of PPO
18 load would switch based on price?

19 A. (Mr. Domagalski) Based on the data that
20 are available through the graphs, it struck us that
21 price was an important component to the purchasing
22 decisions that these customers made over the last

1 three years.

2 Q. That wasn't the answer to my question but I
3 will accept that answer and ask you another question.
4 Isn't it correct that you assume that a hundred
5 percent of PPO load would switch based on price?

6 A. (Mr. Domagalski) For purposes of the
7 translation mechanism, yes.

8 Q. And that is what I am asking about, thank
9 you. Yes. But now were you in the room when
10 Mr. Steffes was cross-examined a few minutes ago?

11 A. (Mr. Domagalski) For most of it, yes.

12 Q. Isn't it true that a decision to switch or
13 not to switch can take into consideration factors
14 other than price?

15 A. (Mr. Domagalski) Yes, that's absolutely
16 right.

17 Q. And so that even though a price may be a
18 factor in a customer's thinking whether to switch
19 from PPO load to RES supply, that there are other
20 non-price factors that may also influence that
21 decision and cause the customer not to switch?

22 A. (Mr. Domagalski) Yes, for the most part,

1 yes, I agree.

2 Q. And there, for example, could be some
3 non-price contract terms that would cause the
4 particular customer, the PPO customer, to remain with
5 Commonwealth Edison Company?

6 A. (Mr. Domagalski) Right, one of many. I
7 think there are a number of factors that may go into
8 a purchasing decision.

9 Q. Okay. And what are some of the other
10 factors?

11 A. (Mr. Domagalski) Price certainty, contract
12 terms, the extent to which there is a sharing of
13 risk, for instance, taking more of an index product
14 rather than a fixed price product. So there are a
15 number of things.

16 Q. Okay. Let's turn next to this second
17 component of the migration risk calculation and
18 that's the volatility measurement period. Am I
19 correct that what ComEd proposes is to measure price
20 volatility during the time that the customer has to
21 make its decision to switch, the time in which the
22 customer has to make the decision to switch, roughly

1 17 months?

2 A. (Mr. Domagalski) You are talking about the
3 forward price volatility estimate?

4 Q. That is correct.

5 A. (Mr. Domagalski) Right. The analysis, the
6 estimate, that was used in the utilization mechanism
7 was, I believe, one and a half years, that is
8 correct.

9 Q. Roughly 17 months?

10 A. (Mr. Domagalski) Right.

11 Q. Now, you use a shorter period in your
12 translation formula?

13 A. (Mr. Domagalski) Yes, we propose a shorter
14 window of measuring that, that is correct.

15 Q. Six months?

16 A. (Mr. Domagalski) Right.

17 Q. Now, isn't it correct that the shorter the
18 period, the more susceptible the volatility measure
19 is to one-time price movements?

20 A. (Mr. Domagalski) Not necessarily. If you
21 look at the analysis that we did, you can see that
22 over -- we broke down the one and a half year period

1 into six month increments, and you can see that over
2 one six-month period the volatility is, you know,
3 materially below the average, for instance.

4 Q. Do you have a page reference to those, each
5 of those references to the six-month periods?

6 A. (Mr. Domagalski) Yes. If you look at page
7 212, I guess it is lines 244 to 248.

8 Q. And is it correct that that chart shows
9 that, depending on the particular six-month period,
10 you use the volatility factor range from 18.6 percent
11 to a high of 29.7 percent?

12 A. (Mr. Domagalski) That's correct.

13 Q. So in the event that one used a six-month
14 period in which the volatility factor was 29.7
15 percent, that would yield a higher volatility
16 calculation for the model as opposed in this case to
17 using the roughly 18-month period?

18 A. (Mr. Domagalski) Right, yeah, it goes both
19 ways.

20 Q. Well, I think let me go back to my original
21 question. And that was precisely my point, that it
22 can go both ways. If you use a shorter period of

1 time, you are more susceptible to a one-time event,
2 aren't you?

3 A. (Mr. Domagalski) Well, sort of generally,
4 yes. But I think you are --

5 Q. Thank you. You have answered my question,
6 and your counsel can come back and ask you on
7 redirect for an explanation. Let me move on.

8 Isn't it true that a higher value of volatility
9 will raise prices to CNI customers who are taking
10 CPP-B service

11 A. (Mr. Domagalski) Not through the
12 translation mechanism necessarily because the
13 translation mechanism simply just allocates the price
14 that's bid in. So, therefore, it is sort of a zero
15 some gain in that regard. So it doesn't necessarily
16 raise -- it doesn't raise the overall price levels.

17 Q. But you understand that the purpose of the
18 migration risk calculation that's included in the
19 prism...

20 A. (Mr. Domagalski) Right.

21 Q. ...is to account for migration risk,
22 correct?

1 A. (Mr. Domagalski) Right.

2 Q. So there is a cost to suppliers because of
3 the risk of migration, isn't there?

4 A. (Mr. Domagalski) Possibly so, but I can't
5 really answer that directly because right now we are
6 only talking about the translation mechanism, not
7 necessarily what the wholesale suppliers have bid
8 into their price.

9 Q. But the translation mechanism is designed
10 to account for these risks that we have just been
11 discussing, isn't it?

12 A. (Mr. Domagalski) It attempts to.

13 Q. Yes. And it does that by assigning a cost
14 to the customers who may switch, doesn't it?

15 A. (Mr. Domagalski) It does tend to allocate
16 more of the costs to those who are likely to switch.

17 Q. And my question is if we use a higher
18 annual volatility factor, say 27 percent as opposed
19 to 18.6 percent, that will have the effect of raising
20 prices to those customers who are taking CPP-B
21 service because it will raise the migration risk
22 result?

1 A. (Mr. Spilky) If I may comment on that, I
2 don't think that is true because it would indeed --
3 if indeed the 29 percent in your example was adopted
4 rather than the 18 percent, that would shift more
5 costs to the group of customers who are more likely
6 to switch, but it would in turn lower the costs for
7 those customers who are less likely to switch. There
8 would be a zero some gain. And my colleague can
9 correct me if I am mistaken on that.

10 A. (Mr. Domagalski) No, that is correct.

11 Q. So it would increase costs -- let me ask
12 you this. Doesn't the migration risk factor apply to
13 all customers taking service in this group?

14 A. (Mr. Domagalski) Right. Well, the
15 calculation is done for all customer grouping that
16 has been articulated in the ComEd proposal.

17 Q. Okay. Now, the 17-month period which ComEd
18 proposes to use is the approximate life of the option
19 period during which CPP-B customers would have the
20 opportunity to switch, isn't it?

21 A. (Mr. Domagalski) Generally that's
22 accurate, yes.

1 Q. And is it also true that in Exhibit 6.1
2 page 2 to your surrebuttal testimony you attach a
3 portion of an article which you discuss in your
4 testimony, and on the left-hand column about midway
5 down there is the statement, doesn't this statement
6 appear, "Once we realize this, we might logically
7 choose to give the greatest weight to the volatility
8 data covering the time period closest to the life of
9 the options in which we are interested"?

10 A. (Mr. Domagalski) I am sorry. Could you
11 point me to the right page?

12 Q. Sure. It is page 2 of your Exhibit 6.1.

13 A. (Mr. Domagalski) Page 2.

14 Q. It is in the first full paragraph about two
15 thirds down.

16 A. (Mr. Domagalski) Page 2 of the exhibit?

17 Q. 6.1.

18 A. (Mr. Domagalski) Right, okay.

19 Q. There is an excerpt.

20 A. (Mr. Domagalski) Right.

21 Q. And about two-thirds down, the first full
22 paragraph, doesn't it state, "Once we realize this,

1 we might logically choose to give the greatest weight
2 to the volatility data covering a time period closest
3 to the life of the options in which we are
4 interested," unquote? Doesn't that statement appear
5 therein?

6 A. (Mr. Domagalski) The statement does appear
7 there, yes.

8 Q. All right. I want to turn next to another
9 topic if we might, dealing with the supply
10 administration charge. You provide testimony with
11 respect to the supply administration charge as well?

12 A. (Mr. Domagalski) Yes, we do.

13 Q. And I think you stated that in general
14 ComEd's proposal lacks an amount and a methodology
15 for determining that charge?

16 A. (Mr. Spilky) I think our proposal doesn't
17 necessarily use the word "amount". It is more of the
18 methodology we wanted to put in place.

19 Q. Now, you don't dispute the appropriateness
20 of a supply administration charge, do you?

21 A. (Mr. Spilky) No, we favor the application
22 of such.

1 Q. And you are also aware that ComEd has
2 responded to your testimony by saying that the actual
3 supply administration charge would be set in the rate
4 case, isn't that correct?

5 A. (Mr. Spilky) Our rebuttal testimony
6 acknowledges that the actual value should be set in
7 the rate case.

8 Q. And in fact ComEd also said that the
9 methodology would be discussed in the rate case,
10 didn't it?

11 A. (Mr. Spilky) That was ComEd's point of
12 view, yes.

13 Q. And that is also Staff's point of view in
14 this case, isn't it?

15 A. (Mr. Spilky) I am unaware of Staff's point
16 of view on that particular matter.

17 Q. You haven't read Staff's testimony on the
18 SFC charts then?

19 A. (Mr. Spilky) I can't recall. Staff may
20 have answered when I looked at the schedules on that
21 particular point.

22 Q. You are aware that ComEd has filed a rate

1 case?

2 A. (Mr. Spilky) I am aware that that was
3 recently done, yes.

4 Q. Are you also aware that ComEd has said that
5 any adjustment of supply charges for uncollectibles
6 will be addressed in the rate case?

7 A. (Mr. Spilky) I am aware that that is
8 ComEd's position.

9 Q. And do you disagree with that position?

10 A. (Mr. Spilky) Our testimony and rebuttal
11 indicates that we do disagree with that.

12 Q. You favor discussing uncollectibles in this
13 case, in the procurement case?

14 A. (Mr. Spilky) The mechanics of the
15 uncollectibles we suggest should be discussed in this
16 case, not the absolute values.

17 Q. Wouldn't you agree that in a rate case we
18 would have all of the information we need regarding
19 costs on both the delivery and the procurement
20 segments to be able to assign them properly with
21 respect to uncollectibles and the supply
22 administration charge?

1 A. (Mr. Spilky) If it is not in the original
2 filings that ComEd has put forward, we can certainly
3 have the opportunity to ask questions for missing
4 information. So presumably we will have all the data
5 on the table when those decisions are made during the
6 rate case.

7 MR. HANZLIK: Thank you. I have no further
8 questions.

9 JUDGE WALLACE: Mr. Fitzhenry?

10 CROSS EXAMINATION

11 BY MR. FITZHENRY:

12 Q. Good afternoon, gentlemen. I am Ed
13 Fitzhenry for the Ameren companies. I am referring
14 to, for example, at page 19 of your rebuttal
15 testimony you recommend that the Commission direct
16 Ameren to initiate a separate docket in which the
17 Commission would review communication materials
18 regarding the post-transition period procurement
19 process or that the Commission itself initiate such a
20 docket, correct?

21 A. (Mr. Domagalski) Just to clarify, we are
22 talking about the Ameren rebuttal testimony?

1 Q. Yes, sir.

2 A. (Mr. Domagalski) Page 19?

3 Q. Page 19.

4 A. (Mr. Spilky) Unfortunately, I am missing
5 page 19.

6 Q. Well, in your direct testimony and in your
7 rebuttal testimony you advocate that the Ameren
8 companies initiate this docket by which the
9 Commission will review communication materials that
10 Ameren companies may share with its customers
11 pertaining to the auction process, is this a fair
12 summary of your recommendation?

13 A. (Mr. Spilky) That sounds familiar. I do
14 see that from my colleague's copy, so yes.

15 Q. And your sole reason for wanting either the
16 docket to be brought on by the Ameren companies
17 themselves or initiated by the Commission is to
18 insure that the Ameren companies are not in violation
19 of the integrated distribution company rules in terms
20 of the information that they would share with their
21 customers, is that right?

22 A. (Mr. Spilky) That was our concern.

1 MR. FITZHENRY: Thank you. That's all the
2 questions I have.

3 JUDGE WALLACE: Redirect?

4 MR. TOWNSEND: If I may have a minute?

5 JUDGE WALLACE: Okay.

6 (Pause.)

7 JUDGE JONES: Mr. Townsend, some redirect?

8 MR. TOWNSEND: Thank you, Your Honors. Just
9 one line of redirect, yes.

10 REDIRECT EXAMINATION

11 BY MR. TOWNSEND:

12 Q. Do you recall Mr. Hanzlik asking you
13 questions about your volatility proposal and your
14 proposal with regards to the adjustment based on
15 volatility? Can you please explain what the goal is
16 of the pricing mechanism regarding volatility and why
17 you have suggested having the price closer to the
18 auction?

19 A. (Mr. Domagalski) Principally, if we turn
20 to our testimony on page 11 of direct and those
21 are -- they are basically starting at line 228, we
22 talk about one of the major reasons for wanting to go

1 with the shorter period is because precisely the fact
2 that the short term situations that we talk about
3 here, for instance, global disruptions in oil supply
4 or potentially unexpected outages that may have a
5 load implication would in theory be incorporated into
6 the migration risk premium that bidders may
7 potentially bid in and, therefore, we believe that
8 the translation mechanism ought to take those into
9 consideration as well.

10 Q. There you talk about unexpected outages.
11 What types of outages are you talking about? What
12 kind of extraordinary events are you suggesting?

13 A. (Mr. Domagalski) Right. I mean outages
14 that may have a material impact on the supply within
15 the region. So, for instance, in northern Illinois
16 or ComEd, for example.

17 Q. Can you think of any recent examples of an
18 extraordinary event that could help the Commission
19 understand why it is necessary to have the
20 calculation done on a shorter time frame, rather than
21 a longer time frame?

22 A. (Mr. Domagalski) I think one good example

1 is Katrina and what we have seen with oil prices and
2 natural gas prices and the impact that that has had.
3 And those type of events we just want to insure that
4 through the translation mechanism there is a
5 reasonable accounting for that in the prices that are
6 translated to customers.

7 Q. And why do you believe that a six-month
8 period would better capture the effect of a Katrina
9 like event going forward?

10 A. (Mr. Domagalski) Because the proposed
11 common approach over a year and a half would tend to
12 sort of mute some of those impacts. And by using the
13 shorter period of time, that premium can be more
14 reasonably reflected in the retail prices to
15 customers.

16 MR. TOWNSEND: Nothing further.

17 MR. HANZLIK: Just a few questions.

18 RECROSS EXAMINATION

19 BY MR. HANZLIK:

20 Q. What would an event like Katrina do to your
21 six-month volatility index? What impact would it
22 have, if any?

1 A. (Mr. Domagalski) Well, it would probably
2 tend to increase the volatility, I think everything
3 else being equal.

4 Q. If it were to increase the volatility
5 index, what would that do to the translation formula
6 in terms of the price charged to those customers?

7 A. (Mr. Domagalski) For those customers that
8 would potentially migrate, to the extent that savings
9 were available, it would tend to allocate more of the
10 costs, I guess, to those classes or customer groups.

11 Q. Now, you also spoke about a nuclear outage.
12 Are you referring there to a nuclear outage of a
13 particular nuclear generating unit or something other
14 than that?

15 A. (Mr. Domagalski) No, nothing in
16 particular. I am just talking about in generalities.

17 Q. So how many nuclear stations would have to
18 be out of service at the same time in order to have
19 an impact on the volatility factor in that six-month
20 period?

21 A. (Mr. Domagalski) I am not sure.

22 Q. Do you know of any situation where a number

1 or a sufficient number of nuclear units have been out
2 of service at the same time to cause an impact on the
3 volatility factor over a six-month period?

4 A. (Mr. Domagalski) No, I am not aware of
5 any.

6 MR. HANZLIK: Thank you. Nothing further.

7 JUDGE JONES: Any other recross? Let the
8 record show there is not.

9 JUDGE WALLACE: I don't have any questions.

10 JUDGE JONES: Thank you, gentlemen.

11 (Witnesses excused.)

12 JUDGE WALLACE: Let's go off the record.

13 (Whereupon there was
14 then had an
15 off-the-record
16 discussion.)

17 JUDGE JONES: Back on the record. Let the
18 record show there was a very short off-the-record
19 discussion regarding a point that was raised earlier,
20 a question raised about whether there would be some
21 scheduling put into place with respect to a motion to
22 exclude certain lines of testimony. That motion was

1 filed late yesterday afternoon in the Ameren company
2 proceedings.

3 I will just state for the record that the date
4 for any responses to those, to that motion, will be
5 September 12 with copies to be served on other
6 parties electronically on that date. There will
7 likely be between now and then a requirement to be
8 built into the schedule. The timing is somewhat
9 different than was the case in the ComEd docket. So
10 I think a reply opportunity can likely be folded in
11 there. There will be more specifics on that at a
12 later time. But I will state for the record the
13 response date so parties won't have to be guessing
14 about that any longer than they need to. That's
15 really all I had on that or I guess anything else at
16 this point.

17 I believe that 9:00 a.m. then is the, once
18 again, the start time for tomorrow so this matter
19 is -- these matters are concluded today and will
20 resume at 9:00 in the morning. Thank you, all.

21 (Whereupon the hearing
22 in this matter was

1 continued until
2 September 8, 2005, at
3 9:00 a.m. in
4 Springfield, Illinois.)

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